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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1993

CITY OF LADUE, EDITH J. SPINK, MAYOR OF THE CITY OF  
LADUE, THOMAS R. REMINGTON, GEORGE L. HENSLEY,  
GALE F. JOHNSTON, JR., ROBERT A. WOOD, ROBERT  
D. MUDD, JOYCE T. MERRILL, AS MEMBERS OF THE  
CITY COUNCIL OF THE CITY OF LADUE,

*Petitioners,*  
v.

MARGARET P. GILLES,  
*Respondent.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Eighth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 21, 1993  
CERTIORARI GRANTED OCTOBER 4, 1993

**BEST AVAILABLE COPY**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

No. 90-2396-C-7

CHRONOLOGICAL DOCKET ENTRIES

DATE	PROCEEDINGS
12/20/90	VERIFIED COMPLAINT fld. NON-JURY. (eod 12/20/90 HB)
12/20/90	Memorandum for Clerk fld. by deft. in re: Entry of Appearance by Jordan B. Cherrick on behalf of deft. as co-counsel w/ F. Douglas O'Leary of Moser & Marsalek. (eod 12/28/90 HB)
12/20/90	Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue w/ Memorandum, Proposed Order, Affidavits of Margaret P. Gilleo, Landon Y. Jones, Calvin F. Dierberg, and Sally H. Gulick in support fld. by plff. (eld 12/20/90 HB)
12/20/90	Courtroom Minute Sheet for Hearing fld. Atty for plff.—Mitchell A. Margo, atty for deft.—Jordan Cherrick. Parties present for hearing on plff's motion for temporary restraining order. Hearing commenced and concluded. TRO motion of plff is DENIED by the Court. Preliminary injunction hearing scheduled for 12/26/90 at 2:00 p.m. (eod 1/8/91 HB)
12/21/90	Notice of Deposition of Calvin Deirberg on 12/24/90 at 10:00 a.m. fld. by plff. (eod 1/8/91 HB)
12/21/90	Notice of Depositions of E.C. Hankins on 12/24/90 at 9:00 a.m., Sally H. Gulick on 12/24/90 at 9:00 a.m., Thomas R. Remington on 12/24/90 at 10:00 a.m., and Edith J. Spink on 12/24/90 at 11:30 a.m. fld. by plff. (eod 1/8/91 HB)



DATE	PROCEEDINGS
12/21/90	Notice of Deposition of Margaret P. Gilleo on 12/24/90 at 12:00 noon fld. by defts. (eod 1/8/91 HB)
12/26/90	Memorandum for Clerk fld. by defts. in re: defts granted leave to file Memorandum in Opposition to Plff's Motion for Preliminary and Permanent Injunctive Relief in excess of 15 pages. SO ORDERED (JCH) by endorsement thereon. (eod 1/8/91 HB)
12/26/90	Memorandum in Opposition to Plff's Motion for Preliminary and Permanent Injunctive Relief fld. by defts. (eod 1/8/91 HB)
12/26/90	Motion for Preliminary Injunction w/ Proposed Order and Memorandum in Support fld. by plff. (eod 1/8/91 HB)
12/26/90	Memorandum for Clerk fld. by Craig Liddy courtroom clerk in re: courtroom minutes. Parties present for preliminary injunction hearing. Cause taken under submission. (eod 1/8/91 HB)
12/26/90	Exhibit list of parties fld. (eod 1/8/91 HB)
12/26/90	Witness list of parties fld. (eod 1/8/91 HB)
12/28/90	Objections to Deposition Questions fld. by defts. (eod 1/8/91 HB)
12/28/90	Reply Memorandum in Support of Motion for Preliminary Injunction fld. by plff. (eod 1/8/91 HB)
12/28/90	Memorandum for Clerk fld. by defts. in re: deft granted leave to file brief in excess of 15 pages. SO ORDERED (JCH) by endorsement thereon. (eod 1/8/91 HB)
12/28/90	Reply Memorandum in Opposition to Plff's Motion for Preliminary and Permanent Injunctive Relief fld. by defts. (eod 1/8/91 HB)

DATE	PROCEEDINGS
1/7/91	MEMORANDUM AND ORDER (JCH), fld. ORDERED that an injunction issue, w/o security therefor. (eod 1/8/91 HB) cc: attys
12/26/90	Exhibits fld. Exhibits Envelope #1. (eod 1/11/91 HB)
12/26/90	Exhibits fld. Exhibits Envelope #2. (eod 1/11/91 HB)
12/26/90	Deposition of E.C. Hankins, taken on behalf of plff on 12/24/90, fld. (eod 1/11/91 HB)
12/26/90	Deposition of Thomas R. Remington, taken on behalf of plff on 12/24/90, fld. (eod 1/11/91 HB)
12/26/90	Deposition of Mayor Edith J. Spink, taken on behalf of plff on 12/24/90, fld. (eod 1/11/91 HB)
<del>12/26/90</del>	Deposition of Chief Calvin Dierberg, taken on behalf of plff on 12/24/90, fld. (eod 1/11/91 HB)
1/18/91	Transcript of Hearing Re: Temporary Restraining Order Before the Honorable Jean C. Hamilton on 12/26/90 at 2:00 p.m. recorded by Karen Moore, transcribed by Deborah A. Carter, fld. (eod 1/23/91 HB)
1/23/91	Certificate of Service of motion fld. by plff. (eod 1/24/91 HB)
1/23/91	Motion to Vacate Preliminary Injunction and Dismiss Plff's Complaint as Moot fld. by defts. (eod 1/24/91 HB) (Ref: 4/11/91)
1/23/91	Motion to Modify Preliminary Injunction w/ proposed Modified Preliminary Injunction Order in support fld. by plff. (eod 1/24/91 HB) (Ref: 4/11/91)
1/22/91	COURTROOM MINUTE SHEET fld. Atty for plff —Mitchell Margo, atty for deft—Jordan Cherrick. Parties present for hearing on deft's motion to vacate judgment. Hearing commenced and con-



DATE	PROCEEDINGS
	cluded. Parties to file a time schedule for the filing of briefs with the Court. All pending motions will then be submitted to Court. (eod 1/28/91 HB)
1/28/91	AMENDED COMPLAINT fld. by plff. (eod 1/30/91 HB)
1/30/91	ANSWER to plff's Amended Complaint fld. by defts. (eod 1/31/91 HB)
2/5/91	Courtroom Minute Sheet fld. Atty for plff: Mitchell Margo, attys for deft: Jordan Cherrick and Jay Summerville. Parties present for pretrial conference. Hearing commenced and concluded. Memo to be fld. re: scheduling of pleadings to be fld. (eod 2/6/91 HB)
2/5/91	Memorandum for Clerk fld. by parties in re: Procedural schedule is as follows, subject to modification by the Court for good cause shown and in the interest of justice: 1) Defts to file counterclaim by 2/7/91, 2) Plff to file answer to defts' counterclaim and motion for summary judgment on or before 2/11/91, 3) Defts to file response to plff's motion for summary judgment and their cross-motion for summary judgment on/before 2/27/91, 4) Plff to file response to defts' cross-motion for summary judgment on/before 3/6/91; 5) Defts to seek leave to file reply to plff's response to deft's cross-motion for summary judgment, if at all, and shall file such reply, if leave is granted, on/before 3/13/91; 6) Upon receipt of plff's responsive papers as referred to above, defts may file their motion for an evidentiary hearing if necessary, for determination by the Court. Defts have agreed, in order to expedite final submission and presentation of the merits of the issues in dispute, they shall not enforce new Chapter 35 of the Ladue City Code as it affects non-commercial speech until the disposition of the cross-motions for sum-

DATE	PROCEEDINGS
	mary judgment although defts aver and believe that said Chapter is constitutional, a claim plff disputes. Parties have agreed that each shall telecopy a copy of each pleading fld. to opposing counsel on the same day of filing w/ the Court in addition to service by mail. SO ORDERED (JCH), by endorsement thereon. (eod 2/6/91 HB) cc: attys
2/7/91	COUNTERCLAIM fld. by defts. (eod 2/8/91 HB)
2/11/91	Motion for Leave to file Memorandum in Support of Plff's Motion for Summary Judgment and Permanent Injunction in excess of 15 pages fld. by plff. SO ORDERED (JCH), by endorsement thereon. (eod 2/12/91 HB) cc: attys
2/11/91	Motion for Summary Judgment and Permanent Injunction w/ Memorandum in Support fld. by plff. (eod 2/12/91 HB) (Ref: _____)
2/11/91	ANSWER to Deft's Counterclaim fld. by plff. (eod 2/12/91 HB)
	2/11/91—Motion to modify preliminary injunction fld. by plff 1/23/91 submitted to Judge Hamilton. (eod 2/12/91 HB)
	2/11/91—Motion to vacate preliminary injunction and to dismiss complaint fld. by defts on 1/23/91 submitted to Judge Hamilton (eod 2/12/91 HB)
2/27/91	Memorandum for Clerk fld. by defts in re: defts granted leave to file Suggestions in Support of Motion for Summary Judgment and in Opposition to Plff's Motion for Summary Judgment in excess of 15 pages. SO ORDERED (JCH), by endorsement thereon. (eod 3/1/91 HB) cc: attys
2/27/91	Memorandum for Clerk fld. by defts in re: defts granted to 3/4/91 to file response to plff's motion for summary judgment and their own motion for

DATE	PROCEEDINGS
	summary judgment; plffs granted to 3/18/91 to file response to deft's motion for summary judgment and reply to defts' response. SO ORDERED (JCH), by endorsement thereon. (eod 3/1/91 HB) cc: attys
2/27/91	Motion for Leave to File Amended Counterclaim w/ proposed Amended Counterclaim and exhibits in support fld. by defts. (eod 3/1/91 HB) (Ref: 4/11/91)
3/4/91	Motion for Oral Argument on Motion for Summary Judgment fld. by defts. (eod 3/6/91 HB) (Ref: ———)
3/4/91	Motion for Summary Judgment w/ Exhibits (2 accordion folders and 2 maps), Attached Exhibits, and Suggestions in Support fld. by defts. (eod 3/6/91 HB) (Ref: ———)
3/4/91	Answer to Amended Counterclaim RECEIVED FROM plff—not filed until Amended Counterclaim is fld. (eod 3/6/91 HB)
3/4/91	Motion for Leave to File Second Amended Complaint w/ proposed Second Amended Complaint in Support. (eod 3/6/91 HB) (Ref: 4/11/91)
3/6/91	Letter fld. by deft in re: signature pages of affidavits. (eod 3/7/91 HB)
3/6/91	Joint Answer to Plff's Second Amended Complaint RECVD—not filed until 2nd Amd Complaint is fld.—from defts. (eod 3/7/91 HB)
3/14/91	Memorandum for Clerk fld. by plff in re: plff granted to 3/21/91 to file reply to Defts' Suggestions in Opposition to Plff's Motion for Summary Judgment and in Support of Defts' Motion of Summary Judgment. SO ORDERED (SNL), by endorsement thereon. (eod 3/14/91 HB) cc: attys

DATE	PROCEEDINGS
3/15/91	Motion for leave to file amended counterclaim fld. by defts on 2/27/91 submitted to Judge Hamilton. (eod 3/18/91 HB)
3/15/91	Motion for oral argument on motion for summary judgment fld. by defts on 3/4/91 submitted to Judge Hamilton. (eod 3/18/91 HB)
3/15/91	Motion for leave to file second amended complaint fld. by plff 3/4/91 submitted to Judge Hamilton. (eod 3/18/91 HB)
3/21/91	Reply to Defts' Suggestions in Support of Their Motion for Summary Judgment and Opposition to Plff's Motion for Summary Judgment fld. by plff. (eod 3/22/91 HB)
3/22/91	Exhibit A in Support of Plff's Reply to Defts' Suggestions in Support of their Motion for Summary Judgment and Opposition to Plff's Motion for Summary Judgment fld. by plff. (eod 3/25/91 HB)
3/27/91	Affidavit of Edith Spink w/ Videotape Exhibit in Support fld. by defts. (eod 4/2/91 HB)
4/10/91	1 Box of Exhibits placed in Exhibit Room on 1M. (eod 4/10/91 HB)
4/10/91	Letter fld. by deft in re: 8th Circuit opinion in ACORN v. St. Louis County. (eod 4/12/91 HB)
4/11/91	ORDER (JCH), fld. HEREBY ORDERED plff's motion to modify preliminary injunction is DENIED as moot. FURTHER ORDERED defts' motion to vacate preliminary injunction and dismiss plff's complaint is DENIED. FURTHER ORDERED plff's motion for leave to file a second amended complaint is GRANTED. FURTHER ORDERED defts' motion for leave to file an amended counterclaim is GRANTED. (eod 4/12/91 HB) cc: attys

DATE	PROCEEDINGS
4/11/91	ORDER (JCH), fld. HEREBY ORDERED that the parties shall have 20 days to file additional simultaneous briefs on the subject of this Court's jurisdiction over the second amended complaint and the amended counterclaim. FURTHER ORDERED that the parties' motions for summary judgment will be considered after the briefs on the jurisdictional issue are submitted. (eod 4/12/91 HB) cc: attys
4/11/91	SECOND AMENDED COMPLAINT fld. by plff. (eod 4/12/91 HB)
4/11/91	JOINT ANSWER TO PLFF'S SECOND AMENDED COMPLAINT fld. by defts. (eod 4/12/91 HB)
4/11/91	AMENDED COUNTERCLAIM fld. by defts. (eod 4/12/91 HB)
4/11/91	ANSWER TO DEFTS' AMENDED COUNTERCLAIM fld. by plff. (eod 4/12/91 HB)
4/12/91	Letter to Judge Hamilton fld. by plff in re: 8th Circuit opinion in ACORN v. St. Louis County. (eod 4/15/91 HB)
4/18/91	Suggestions in Response to Court Order fld. by plff. (eod 4/19/91 HB)
4/22/91	Motion for Leave to Amend Their Answer and their Amended Counterclaim by Interlineation fld. by defts. LEAVE GRANTED (JCH), by endorsement thereon. (eod 4/23/91) HB) cc: attys
4/22/91	Amendments by Interlineation fld. by defts. (eod 4/23/91 HB)
5/1/91	Suggestions in Response to Court Order Respecting Jurisdictional Issue fld. by defts. (eod 5/2/91 HB)

DATE	PROCEEDINGS
	5/14/91—Briefs fld. by parties on 4/18/91 and 5/1/91 and pending motions for summary judgment submitted to Judge Hamilton. (eod 5/16/91 HB)
10/1/91	MEMORANDUM AND ORDER (JCH) IT IS HEREBY ORDERED that defts. motion for summary judgment seeking a declaration that new chapter 35 is constitutional is DENIED. IT IS FURTHER ORDERED that plttf.'s motion for summary judgment is GRANTED. IT IS FURTHER ORDERED that an injunction issue restraining defts. from enforcing new chapter 35, article II, section 35-2; section 35-4; section 35-5 the first sentence only as it specifies identification signs; section 35-5 the second sentence beginning with "shall be limited . . ." and ending with "other functions"; section 35-5 the third sentence as it relates to limitations on announcements; section 35-8(b) the first sentence beginning with "giving only the name . . ." and ending at the end of the first sentence; section 35-8(b) the words "and content" in the second sentence; and section 35-10. Fld. cc: attys. (eod 10/3/91 ca)
10/1/91	ORDER (JCH) IT IS HEREBY ORDERED that defts. motion for summary judgment seeking a declaration that new chapter 35 is constitutional is DENIED. IT IS FURTHER ORDERED that plttf.'s motion for summary judgment is GRANTED. IT IS FURTHER ORDERED that an injunction issue restraining defts from enforcing new chapter 35 article II, section 35-2; 35-4; 35-5 the first sentence only as it specifies identification signs; etc. Fld. cc: attys. (eod 10/3/91 ca)
10/3/91	LETTER to Judge Hamilton from defts. (sc)
10/3/91	ORDER NUNC PRO TUNC (JCH) fld., It is hereby ordered nunc pro tunc that the phrase "although none of their memoranda prior to the pre-



DATE	PROCEEDINGS
	liminary injunction cite the case" is deleted from the first sentence of the first full paragraph of page 5 of the order of this Court filed October 1, 1991; and the sentence shall now read, "Defendants maintain that <i>Ward v. Rock Against Racism</i> , 491 U.S. 781, 109 S.Ct. 2746 (1989) represents a dramatic change in First Amendment jurisprudence." cc: attys (sc)
10/8/91	OPINIONS of 1/7/91, 10/1/91 and 10/3/91 PUBLISHED (sc)
10/9/91	MOTION to alter or amend the court's October 1, 1991 order and judgment w/suggestions in support by defts. (REF ———) (cm)
10/15/91	OPPOSITION to defts' motion to alter or amend court's order and judgment by plttf. (cm)
10/21/91	APPLICATION for attys. fees and expenses fld. by plttf. w/affidavit of Mitchell Margo. REF. ———. (sc)
10/29/91	EXTENSION OF TIME—defts granted until 11/7/91 to file response to plttf's application for award of attys' fees and expenses. SO ORDERED (JCH) cc: attys. (cm)
11/7/91	OPPOSITION to application of plttf's counsel for atty's fees and expenses by defts. (cm)
11/13/91	EXTENSION OF TIME—plttfs' granted until 11/18/91 to file reply to defts' objections to the application of Green, Hoffman & Dankenbring for attys' fees and expenses. SO ORDERED (JCH) cc: attys. (cm)
11/18/91	REPLY to defts' opposition to application of plttf's counsel for attys fees and expenses by plttf. (cm)
11/20/91	SUPP'L AFFIDAVIT of Mitchell A. Margo, fld. (cm)
4/23/92	OPINIONS OF 1/7/91 and 10/1/91 PUBLISHED (sc)

DATE	PROCEEDINGS
4/30/92	ORDER (JCH) IT IS HEREBY ORDERED that defts. mtn. to alter or amend the court's 10/1/91 order and judgment is DENIED. Fld. cc: attys. (ca)
4/30/92	ORDER (JCH) IT IS HEREBY ORDERED that the application of plttf.'s counsel, Green, Hoffmann & Dankenbring for atty.'s fees and expenses is GRANTED. IT IS FURTHER ORDERED that plttf. Margaret Gilleo recover of defts. \$74,813.25 for atty.'s fees and \$4,099.00 for costs. Fld. cc: attys. (ca)
5/12/92	ORDER OF 4/30/92 PUBLISHED. (sc)
5/27/92	NOTICE OF APPEAL Filed by Deft. with Form A appealing ORDER of 4/30/92 (JCH) approving application for attorney's fees by plaintiff's counsel. Fee Paid. Receipt #85211. (pm)
5/27/92	NOTICE OF APPEAL filed by Deft. with Form A appealing ORDER (JCH) of 4/30/92 denying Deft. motion to alter or amend ORDER (JCH) of 10/1/91 denying Deft. motion for summary judgment. Fee paid. Receipt #85212. (pm)
6/1/92	DELIVERED TO U.S.C.A. 1 civil cover sheet, 2 cert. cc of NOA, 2 cert. cc of clerk's docket entries, 2 cc of ORDER (JCH) filed 4/30/92 granting plttf. awarded atty. fees, cc: NOA to Judge Hamilton. cc: NOA, clerk's docket entries and U.S.C.A. ltr. of 10/19/84 to parties. (pm)
6/1/92	DELIVERED TO U.S.C.A. 1 civil cover sheet, 2 cert. cc. of NOA, 2 cert. cc of Clerk's docket entries, 2 cc of ORDER (JCH) of 4/30/92 denying Deft. motion to amend or alter ORDER of 10/1/91 (JCH) denying Deft. motion for summ. judg. cc: NOA to Judge Hamilton; cc: NOA & clerk's docket entries & U.S.C.A. ltr. of 10/19/84 to parties. (pm)

DATE	PROCEEDINGS
6/24/92	ORDER (USCA) fld., appellants have moved for an order directing the district court clerk to transmit the entire file including all exhibits, for use in this appeal, appellant's motion is granted and the district court is directed to transmit his file in this matter.
	6/29/92—File forwarded to USCA. (sc)
7/8/92	RECEIPT from USCA.—1 vox of exhibits. (jh).
06/08/92	BRIEFING SCHEDULE from U.S.C.A.: TRANSCRIPT due N/A JOINT APPENDIX due 07/27/92. (mef)
	U.S.C.A. NUMBER 92-2232 EMSL
2/22/93	OPINION, (USCA) USDC is modified and affirmed. Atty's fees award is reduced to \$65,055.00 (kec)
3/19/93	MANDATE fld. by USCA
3/31/93	SATISFACTION of judgment. Fld. by plttf. (ca)
5/5/93	CORRECTED PAGES 6, 7 & 8 of Opinion of February 22, 1993, issued by Court. (jh).
6/2/93	NOTICE of filing petition for certiorari fld. by City of Ladue. (sc)

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

\_\_\_\_\_  
No. 92-2232 and 92-2235  
\_\_\_\_\_

CHRONOLOGICAL DOCKET ENTRIES

DATE	PROCEEDINGS
6/4/92	Civil Case Docketed. (lkl) [92-2232]
6/4/92	CERTIFIED copies notice of appeal, docket entries, [92-2232] and order of 4/30/92 from district court [167090] (lkl) [92-2232]
6/4/92	BRIEFING SCHEDULE: Method of apndx due on 6/15/92 in 92-2232, in 92-2235 DR aplnt due on 6/15/92 in 92-2232, in 92-2235 DR aplee due on 6/25/92 in 92-2232, in 92-2235 Apndx due on 7/27/92 in 92-2232, in 92-2235 Aplnt brief due on 8/26/92 in 92-2232, in 92-2235 reply brief due on 9/9/92 in 92-2232, in 92-2235 (lkl) [92-2232 92-2235]
6/5/92	APPEARANCE for appellant, attorney Jordan Bernard Cherrick in 92-2232 [167974] (cah) [92-2232]
6/12/92	REMARKS: Separate appendices will be filed. (bap) [92-2232]
6/12/92	MOTION of aplnts City of Ladue, et al, in 92-2232, to order the district court to forward its entire record to the court of appeals. [92-2232] [172341] (bap) [92-2232]
6/18/92	ORDER filed: granting apellant motion to order the district court to forward its entire record to the court of appeals [172341-1] by Appellants City of Ladue, et al, [92-2232] [172348]: Appellants have moved for an order directing the dis-

DATE	PROCEEDINGS
	trict court clerk to transmit his entire file in case no. 90-2396-C-7, including all exhibits, to this court for use during the appeal. Appellants' motion is granted, and the district court clerk is hereby requested to transmit his file in this matter. (bap) [92-2232]
6/23/92	APPEARANCE for appellee, attorney Mitchell A. Margo in 92-2232 [174507] (bap) [92-2232]
6/29/92	RECORDS received: Original File, consisting of 2 Volume(s), (in box) Location STL. [92-2232, 92-2235] (raw) [92-2232 92-2235]
6/29/92	RECORDS received: Transcript, consisting of one Volume(s). (hearing on restraining order) (filed in box). Location STL. [92-2232] (raw) [92-2232 92-2235]
6/29/92	RECORDS received: (one brown folder in box) (4) Depositions of E.C. Hawkins, Thomas R. Remington, Mayor Edith J. Spink, Chief Calvin Dierberg. Location STL [92-2232, 92-2235] (raw) [92-2232 92-2235]
6/29/92	RECORDS received: Exhibits, (in box) Located in: STL, consisting of 2 large wallets, 1 brown expandable folder. [92-2232, 92-2235] (raw) [92-2232 92-2235]
7/9/92	RECORDS received: Exhibits, Located in: STL, consisting of one box containing two accordion folders (one labeled "Spink Affidavit Exhibits", one labeled "Drummond Affidavit Exhibits"), one video tape (Exh. HH), two rolled-up poster-size Exhibits (one labeled "Drummond K", one labeled "Drummond L"). [92-2232, 92-2235] (raw) [92-2232 92-2235]
7/20/92	MOTION of aplnts City of Ladue, et al, in 92-2232 and 92-2235, for extension of time to file brief. [92-2232, 92-2235] [92-2232, 92-2235] [184180] (bap) [92-2232 92-2235]

DATE	PROCEEDINGS
7/21/92	ORDER filed: granting appellant motion for extension of time to file brief [184180-1] by Appellants City of Ladue, et al, [184183] in 92-2232, 92-2235 Aplnt brief now due on 8/12/92 in 92-2232, in 92-2235 (bap) [92-2232 92-2235]
8/7/92	MOTION of aplnt City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235, to file overlength brief of 60 pages [92-2232, 92-2235] [192377] (bap) [92-2232 92-2235]
8/11/92	ORDER filed: granting apellant motion to file overlength brief of 60 pages [192377-1] by Appellants City of Ladue, et al. [92-2232, 92-2235] [192380] in 92-2232, 92-2235 (bap) [92-2232 92-2235]
8/11/92	MOTION of applnt City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235, for extension of time to file brief. [92-2232, 92-2235] [92-2232, 92-2235] [92-2232, 92-2235] [192385] (bap) [92-2232 92-2235]
8/11/92	ORDER filed: granting appellant motion for extension of time to file brief [192385-1] by Appellants City of Ladue, et al [192387] in 92-2232, 92-2235 Aplnt brief now due on 8/19/92 in 92-2232, in 92-2235 (bap) [92-2232 92-2235]
8/19/92	BRIEF OF APPELLANT. 60 pgs (City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235), w/addendum 12 Copies. w/service 8/19/92 [92-2232, 92-2235] (bap) [92-2232 92-2235]
8/19/92	RECORDS received: Appendix filed by Appellants City of Ladue, et al, in 92-2232, Appellants City of Ladue, et al, in 92-2235, consisting of 2 Volume(s), 4 Copies. [92-2232, 92-2235] (bap) [92-2232 92-2235]
8/25/92	MOTION of aplee Margaret P. Gilleo in 92-2232, Margaret P. Gilleo in 92-2235 for extension of time to file brief. [92-2232, 92-2235] [197704] (bap) [92-2232 92-2235]



DATE	PROCEEDINGS
8/27/92	ORDER filed: granting appellee motion extension of time to file brief. [197704-1] by Appellee Margaret P. Gilleo, Margaret P. Gilleo [197914] in 92-2232, 92-2235 Aplee brief now due on 9/28/92 in 92-2232, in 92-2235 (bap) [92-2232 92-2235]
9/24/92	MOTION of aplee Margaret P. Gilleo in 92-2232 and 92-2235 for extension of time to file brief. [92-2232, 92-2235] [209245] (tab) [92-2232 92-2235]
9/28/92	ORDER filed: granting in part appellee motion extension of time to file brief. [209248] in 92-2232, 92-2235. Aplee brief now due on 10/16/92 in 92-2232 and 92-2235. NO FURTHER EXTENSIONS. (tab) [92-2232 92-2235]
10/8/92	Record Sent out of the office for use by the District Court. Records Included: 1 vol. hrg. TR; (to be returned to this office). [92-2232, 92-2235] (raw) [9-2232 92-2235]
10/16/92	BRIEF OF APPELLEE. 40 pgs (Margaret P. Gilleo in 92-2232, Margaret P. Gilleo in 92-2235) w/addendum 10 Copies w/service 10/16/92 [92-2232, 92-2235] (bap) [92-2232 92-2235]
10/19/92	TO SCREENING to Motion Practice Unit. [92-2232, 92-2235] (ljg) [92-2232 92-2235]
10/23/92	RETURNED from Screening (20) [92-2232, 92-2235] (lcd) [92-2232 92-2235]
10/27/92	MOTION of aplnt City of Ladue, et al, in 92-2232, aplee City of Ladue, et ad, in 92-2235, for extension of time to file reply brief. [92-2232, 92-2235] [220456] (bap) [92-2232 92-2235]
10/28/92	ORDER filed: granting appellant motion extension of time to file reply brief [220456-1] by Appellants City of Ladue, et al, Appellees City of Ladue, et al, [220458] in 92-2232, 92-2235 Reply brief now due on 11/16/92 in 92-2232, in 92-2235 (bap) [92-2232 92-2235]

DATE	PROCEEDINGS
11/5/92	RECORDS received: Exhibits, Located in: STL, consisting of one white envelope containing video tape (Exh. HH). (This is a duplicate of video tape received 7/9/92; see 179557). (Supplied by attorney for Appellant, Jordan Cherrick; return at end of proceedings). [92-2232, 92-2235] (raw) [92-2232 92-2235]
11/11/92	MOTION of aplnt City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235, for extension of time to file reply brief. [92-2232, 92-2235] [226321] (bap) [92-2232 92-2235]
11/11/92	ORDER filed: granting appellant motion extension of time to file reply brief [226321-1] by Appellants City of Ladue, et al, [226326] in 92-2232, 92-2235. Reply brief now due on 12/2/92 in 92-2232, in 92-2235. (bap) [92-2232 92-2235]
11/30/92	*SET FOR ARGUMENT*—January, 1993 in St. Louis. [92-2232, 92-2235] (lcd) [92-2232 92-2235]
11/30/92	MOTION of aplnt City of Ladue, et al, in 92-2232, 92-2235 to file overlength reply brief of 35 pages [92-2232, 92-2235] [233058], for extension of time to file reply brief. [92-2232, 92-2235] [233058] (bap) [92-2232 92-2235]
12/1/92	ORDER filed: granting in part appellant motion motion to file overlength reply brief of 35 pages [233060] in 92-2232, 92-2235, granting appellant motion extension of time to file reply brief [233058-2] by Appellants City of Ladue, et al, [233060] in 92-2232, 92-2235 Reply brief now due on 12/8/92 in 92-2232, in 92-2235. Reply brief shall not exceed 30 pages. (bap) [92-2232 92-2235]
12/8/92	REPLY BRIEF. 30 pgs (City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235) 10 Copies w/service 12/8/92 [92-2232, 92-2235] TO HEARING PANEL. (bap) [92-2232 92-2235]

DATE	PROCEEDINGS
12/18/92	MOTION of aplee Margaret P. Gilleo in 92-2232 and 92-2235 to Reschedule Oral Argument from 1/13/93 until next available court session [240682] [92-2232, 92-2235], TO COURT. (lcd) [92-2232 92-2235]
12/18/92	RESPONSE of aplnt, City of Ladue, Edith J. Spink, Thomas R. Remington, George L. Hensley, Gale S. Johnston, Robert A. Wood, Robert D. Mudd, George Fonyo, City of Ladue in 92-2232 and 92-2235, in opposition to appellee motion to Reschedule Oral Argument by Margaret P. Gilleo [240682-1] [240703] in 92-2232, 92-2235. TO COURT. (lcd) [92-2232 92-2235]
12/29/92	JUDGE ORDER by MSA, FRG, TMR denying appellee motion to Reschedule Oral Argument. [240682-1] filed by Margaret P. Gilleo [243046] in 92-2232, 92-2235 (lcd) [92-2232 92-2235]
1/13/93	APPEARANCE for appellee, attorney Gerald Phillip Greiman in 92-2232 [92-2232] [249162] (cgj) [92-2232]
1/13/93	ARGUED AND SUBMITTED IN ST. LOUIS TO JUDGES Morris S. Arnold, Circuit Judge, Floyd R. Gibson, Senior Judge, Thomas M. Reavley, Visiting Judge (5th Circuit Senior Judge, Austin, Texas) Jordan Cherrick for Appellants George Fonyo, Appellants Robert D. Mudd, Appellants Robert A. Wood, Appellants Gale S. Johnston, Appellants George L. Hensley, Appellants Thomas R. Remington, Appellants Edith J. Spink, Appellants City of Ladue in 92-2232, Gerald Phillip Greiman for Appellee Margaret P. Gilleo in 92-2232. Jordan Bernard Cherrick for Appellants George Fonyo, Appellants Robert D. Mudd, Appellants Robert A. Wood, Appellants Gale S. Johnston, Appellants George L. Hensley, Appellants Thomas R. Remington, Appellants Edith J. Spink, Appellants City of Ladue in 92-2235, Gerald P. Greiman

DATE	PROCEEDINGS
	for Appellee Margaret Gilleo in 92-2235. Rebuttal by: Jordan Cherrick. RECORDED. [92-2232, 92-2235] (cgj) [92-2232 92-2235]
1/13/93	28(j) citation received and filed from Appellee Margaret P. Gilleo in 92-2232, Appellee Margaret P. Gilleo in 92-2235 TO COURT. [92-2232, 92-2235] (jlm) [92-2232 92-2235]
1/21/93	RESPONSE to 28(j) citation received from Appellants City of Ladue et al in 92-2232, Appellants City of Ladue et al in 92-2235. TO COURT. (jlm) [92-2232 92-2235]
1/25/93	RESPONSE of aplee, Margaret P. Gilleo in 92-2232, Margaret P. Gilleo in 92-2235, in opposition to appellant response to 28j citation—TO COURT. by City of Ladue, Edith J. Spink, Thomas R. Remington, George L. Hensley, Gale S. Johnston Jr., Robert A. Wood, Robert D. Mudd, George Fonyo, City of Ladue, Edith J. Spink, Thomas R. Remington, George L. Hensley, Gale S. Johnston Jr., Robert A. Wood, Robert D. Mudd, George Fonyo [240703-1] in 92-2232, 92-2235. (jlm) [92-2232 92-2235]
2/22/93	THE COURT: Morris S. Arnold, Floyd R. Gibson, Thomas M. Reavley OPINION filed by Thomas M. Reavley PUBLISHED [92-2232, 92-2235] [264752] (ema) [92-2232 92-2235]
2/22/93	JUDGMENT: Morris S. Arnold, Floyd R. Gibson, Thomas M. Reavley: The judgment of the district court is AFFIRMED in accordance with the opinion. The court's attorneys' fee award is reduced to \$65,055.00. [92-2232, 92-2235] [264754] (ema) [92-2232 92-2235]
3/5/93	MOTION of aplee Margaret P. Gilleo in 92-2232 for attorney fees. [92-2232, 92-2235] [269954] (jlm) [92-2232 92-2235]

DATE	PROCEEDINGS
3/15/93	MOTION of aplnt City of Ladue in 92-2232, City of Ladue, et al, in 92-2235 for extension of time to file response to attorneys fees. [92-2232, 92-2235 [273527] (jlm) [92-2232 92-2235]
3/16/93	ORDER filed: granting apellant motion ext. to file resp to atty fees [273527-1] [92-2232, 92-2235] [273529] in 92-2232, 92-2235 (jlm) [92-2232 92-2235]
3/19/93	MANDATE ISSUED [92-2232, 92-2235] (rmh) [92-2232 92-2235]
3/19/93	Record Sent out of the office to lower court at the end of appellate proceedings. Records Included: 2 vols. OF; 1 folder deposition trs, #s, 3, 4, 5, 6, & 1 tr. of Hearing Re: Temporary Restraining Order. TR; 2 boxes containing 2 expandable folders containing (Misc.) exhs. in env. #1 & #2.; 1 folder containing 2 defts' Motion for summary Judgment & 2 defts' Suggestion in Support of their Motion for Summary Judgment & in Opposition to Plaintiff's Motion for Summary Judgment; 1 folder containing Drummond Affit. exhs (Defts' motion for Summary judgment), Drummond, B, C, D, E, F, G, H, I, J, (K & L) are rolled), M, N, O, P, Q, R, S, T, U, V, W, X, Y & Z: Drummond AA, BB, CC, DD, EE, FF, GG, HH, II, & JJ.: Spink CC, DD, EE, FF & env. containing Exhs. A-Z; Spinks AA, BB, (Photos);, Exh;. [92-2232, 92-2235] (rmh) [92-2232 92-2235]
3/22/93	MOTION of aplnt City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235 for extension of time to file response to attorneys fees. [92-2232, 92-2235] Response due 3/23/93. [276381] (jlm) [92-2232 92-2235]
3/22/93	ORDER filed: granting appellant motion ext. to file resp to atty fees [276381-1] [92-2232, 92-2235] [276408] in 92-2232, 92-2235 (jlm) [92-2232 92-2235]

DATE	PROCEEDINGS
3/23/93	RESPONSE of aplnt, City of Ladue, et al, in 92-2232, City of Ladue, et al, in 92-2235, in opposition to appellee motion for attorney fees by Margaret P. Gilleo [269954-1] [92-2232, 92-2235] [277311] in 92-2232, 92-2235. TO COURT. (jlm) [92-2232 92-2235]
3/25/93	RESPONSE of aplee, Margaret P. Gilleo in 92-2232, Margaret P. Gilleo in 92-2235, in reply to appellants' objections to appellee's motin for attorneys' fees. TO COURT. (jlm) [92-2232 92-2235]
3/31/93	RECEIPT for Mandate. [92-2232, 92-2235] [280726] (rmh) [92-2232 92-2235]
4/8/93	JUDGE ORDER: granting appellee motion for attorney fees with the reduction of the hourly charges to accord with the award of the district court judge. [269954-1] [92-2232, 92-2235] [283948] in 92-2232, 92-2235 (jlm) [92-2232 92-2235]
4/30/93	FEDERAL CITATION: 986 F.2d 1180 (1993) [92-2232, 92-2235] (rlc) [92-2232 92-2235]
5/4/93	Opinion CORRECTION. Specifically pages 6, 7, 8. [92-2232, 92-2235] (jlm) [92-2232 92-2235]
5/28/93	RECEIVED courtesy copies of their petition for writ of certiorari—from Jordan Bernard Cherrick for Appellants George Fonyo, Appellants Robert D. Mudd, Appellants Robert A. Appellants Gale S. Johnston, Appellants George L. Hensley, Appellants Thomas R. Remington, Appellants Edith J. Spink, Appellants City of Ladue in 92-2232 [92-2232, 92-2235] (jlm) [92-2232 92-2235]
6/2/93	U.S. Supreme Court notice regarding petition for writ of certiorari. Filed in the Supreme Court on 05/21/93. Supreme Ct. Case No.: 92-1856 [92-2232, 92-2235] [306263] (jlm) [92-2232 92-2235]



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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Cause No. 90-2396-C-7

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MARGARET P. GILLES, *Plaintiff,*  
vs.

CITY OF LADUE, EDITH J. SPINK, MAYOR OF THE CITY  
OF LADUE, THOMAS R. REMINGTON, GEORGE L.  
HENSLEY, GALE S. [sic] JOHNSTON, JR., ROBERT A.  
WOOD, ROBERT D. MUDD, GEORGE FONYO, AS MEM-  
BERS OF THE CITY COUNCIL OF THE CITY OF LADUE,  
*Defendants.*

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VERIFIED COMPLAINT

Filed December 20, 1990

Comes now Margaret P. Gilles and, for her Complaint,  
states as follows:

*Parties*

1. Plaintiff is a citizen and resident of the State of Missouri, residing in St. Louis County, Missouri, within the City of Ladue.

2. Upon information and belief, Defendant City of Ladue is a Class 4 City located within St. Louis County and the State of Missouri. Defendant Spink is the Mayor of Ladue and a member of the City Council. Defendants Remington, Hensley, Johnston, Wood, Mudd and Fonyo are members of the Ladue City Council.

*Jurisdiction And Venue*

3. Plaintiff alleges claims arising under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the Constitution of the United States.

4. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because Plaintiff alleges claims arising under the First and Fourteenth Amendments to the United States Constitution.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the claims arose in this judicial district.

*Statement Of Claim*

5. On or about December 8, 1990, Plaintiff placed upon her own property located within the City of Ladue a sign stating "SAY NO TO WAR IN THE PERSIAN GULF/CALL CONGRESS NOW" for the purpose of expressing her belief in opposition to war in the Persian Gulf.

6. The sign was taken from Plaintiff's property on December 8, the same day she put it up.

7. On or about December 10, 1990, Plaintiff replaced the sign with an identical sign. The next day, the sign was knocked down, apparently by vandals.

8. Plaintiff called the Police Department for the City of Ladue to request assistance in protecting her sign from vandals. Plaintiff was informed at that time that posting such signs was against a Ladue ordinance.

9. Plaintiff then telephoned Ladue City Hall in order to obtain further information regarding the ordinance. She was advised that such signs were not permitted in Ladue.

10. On or about December 12, 1990, Plaintiff went to Ladue City Hall to obtain a copy of the ordinance. She was given a copy of the ordinance (attached hereto as

Exhibit A). Plaintiff read the ordinance and believed she could obtain a permit to display her sign from E. C. Hankins, the Ladue City Clerk. However, Plaintiff was further advised that Mr. Hankins was unavailable but would be available on December 13.

11. On December 13, Plaintiff returned to Ladue City Hall and was again advised that Defendant Hankins was not in. She was then referred to Chief Calvin Dierberg, the Ladue Chief of Police. Chief Dierberg asked Plaintiff what her sign said, and Plaintiff told him. Chief Dierberg then advised Plaintiff that he could not issue her a permit to display the sign, but she could attend the next City Council meeting to petition the Council for permission to display the sign.

12. On December 17, 1990, Plaintiff appeared before the City Council of the City of Ladue, at a regularly scheduled council meeting, and requested the issuance of a permit to place the aforementioned sign on her property.

13. A vote was held by the City Council denying Plaintiff a permit to place such sign upon her property,

14. Defendants' ordinance violates the rights of free speech protected by the First Amendment of the Constitution of the United States and should be invalidated.

15. The actions of the City seek to restrain Plaintiff's freedom of speech, and the continued denial of a permit to place the sign upon her property will cause Plaintiff irreparable harm and will result in damages to Plaintiff that are difficult, if not impossible, to ascertain.

16. Unless Defendants are enjoined from removing the aforementioned sign from Plaintiff's property, or alternatively enjoined from seeking to enforce the unconstitutional ordinance, constitutional rights of Plaintiff will be impermissibly abridged.

WHEREFORE, Plaintiff demands that the Court enter the following orders:

1. Preliminary and permanent injunctive relief restraining and prohibiting Defendants from directly or indirectly, alone or in concert with others, enforcing the provisions of the Ladue City Ordinance, attached hereto as Exhibit A, with regard to the aforementioned sign.

2. Preliminary and permanent injunctive relief restraining and prohibiting Defendants, or their representatives, from removing the aforementioned sign from the property of Plaintiff.

3. Attorneys' fees and costs.

4. Whatever additional relief the Court may deem appropriate under the circumstances.

GREEN, HOFFMANN & DANKENBRING

By: /s/ Martin M. Green  
 MARTIN M. GREEN  
 MITCHELL A. MARGO  
 T. TODD IVESON  
 7733 Forsyth Boulevard, Suite 800  
 St. Louis, MO 63105  
 314-862-6800  
 Attorneys for Plaintiff

[Verification Omitted in Printing]

REPEALED JANUARY 21, 1991

## Chapter 35

### SIGNS

Art. I. In General, §§ 35-1—35-27

Art. II. Permit, §§ 35-28—35-35

#### Article I. In General

##### Sec. 35-1. Definitions.

For the purpose of this chapter, the following terms and words shall have the meanings respectively ascribed to them:

*Area of signs.* The entire area within a single continuous perimeter enclosing the extreme limits of such sign, except "wall signs". Such perimeter shall not include any border or structural elements lying outside and not forming an integral part of the display. The area of a wall sign shall be the height of the tallest letter or display item multiplied by the length of the sign.

*Office building.* A building in which any of the occupants use the space occupied therein primarily for purposes of offices.

*Sign.* A name, word, letter, writing, identification, description, display model, special lighting arrangement, or illustration which is placed upon, affixed to, painted or represented upon a building or structure, or any part thereof, or in any manner upon a parcel of land or lot, and which publicizes an object, product, place, activity, person, institution, organization or place of business. The word "sign" shall also include "banners", "pennants", "insignia", "commercial signs", "bulletin boards", "ground signs", "poster billboards", and "electric signs", wherever placed.

*Wall signs.* Any sign painted on or constructed into and as a part of the wall or exterior of a structure and not extending out from or above the wall or exterior of such structure, but forming an integral part of the surface of such wall or exterior thereof provided that such sign may extend above the wall where there is a wall or roof structure behind all of such extension.

*Window signs.* Any sign attached to the outside or inside of a window, or placed immediately inside of a window for public display purposes to persons on the outside of such building. (Ord. No. 812, § 2, 1-21-63; Ord. No. 929, § 1, 10-16-67; Ord. No. 1387, § 1, 2-10-86)

##### Sec. 35-2. Exemptions from chapter provisions.

The following signs are exempted from the provisions of this chapter:

- (a) All municipal signs.
- (b) Subdivision identification signs of a permanent character and road signs for danger, direction or identification.
- (c) Signs not exceeding one (1) square foot of display surface on a residence building stating only the name and profession of an occupant.
- (d) Health inspection signs.
- (e) Real estate signs authorized by section 35-12. (Ord. No. 812, § 16, 1-21-63)

##### Sec. 35-3. Conformance to chapter provisions.

No sign shall be erected, constructed, painted, placed, enlarged, changed or relocated except in conformity with the provisions of this chapter nor until a permit has been issued; provided that the repainting of display matter shall not be deemed a change. (Ord. No. 812, § 14, 1-21-63)



**Sec. 35-4. Removal of nonconforming signs.**

Any sign which is not constructed, erected or maintained in accordance with the provisions of this chapter may be removed by the city and the cost thereof charged to the owner of, or person maintaining, such sign. (Ord. No. 812, § 15, 1-21-63)

**Sec. 35-5. Variation of chapter provisions.**

The council may grant a permit required by this chapter and permit a variation in the strict application of the provisions and requirements of this chapter where there are practical difficulties or unnecessary hardships, or where the public interest will be best served by permitting such variation. (Ord. No. 812, § 18, 1-21-63)

**Sec. 35-6. Signs restricted within city.**

There shall be no commercial billboards in the city; and no person shall construct, erect, place, paint, display or maintain any sign for display or advertising by means of ground sign boards, free standing signs, roof sign boards, wall signs or bulletins, window signs, illuminated signs, or any other signs, whether or not of the classes herein listed, within the city, except as herein expressly authorized.

The signs hereinafter authorized shall not include, and it shall be unlawful to install, construct, place, display or continue to maintain any sign which is moving, flashing or animated. (Ord. No. 812, § 3, 1-21-63)

**Sec. 35-7. Signs at filling stations.**

In lieu of the signs authorized by other sections of this chapter, gasoline filling stations may erect one banjo type ground sign having an area of not more than twenty-five (25) square feet on each side (except where located on Lindbergh Boulevard, in which event such area shall not exceed sixty (60) square feet on each side) placed no

closer to a street than the nearest edge of the road right-of-way, and having a ground clearance not less than twelve (12) feet at the bottom edge thereof, nor more than twenty-two (22) feet at the top edge thereof.

In addition, such filling stations may erect two (2) free standing signs of not more than twelve (12) square feet each, whose height aboveground at the top edge thereof shall not exceed four (4) feet; and three (3) building or window signs each having maximum dimensions of not more than two (2) square feet in height, with a length not to exceed six (6) feet, and having a combined total area for the three (3) signs of not more than sixty (60) square feet; provided that where such filling station is located on a corner lot it may have four (4) such building or window signs. (Ord. No. 812, § 4, 1-21-63; Ord. No. 1197, § 1, 4-17-78)

**Sec. 35-8. Signs for buildings other than filling stations.**

(a) A building, other than gasoline filling stations, which is located on less than three (3) acres of ground and is occupied by a single separately owned and operated commercial or industrial establishment may have one sign attached to such building. Such sign shall be limited to a height of not more than two (2) feet and a length not to exceed six (6) feet, and shall not extend out over either end of the building. Such sign shall not extend above the wall height of such building unless located on top of the building. In lieu of such sign, if the building is set back further than the front setback line for structures in the applicable zoning district, a free standing sign having an area of not more than fifty (50) square feet or one per cent of the ground floor area of such building, whichever is smaller, but not less than ten (10) square feet, may be erected on such building line.

(b) A building located on three (3) acres or more of ground, which is occupied as set forth on paragraph (a)

of this section, and which covers not more than forty (40) per cent of the area of the tract of ground upon which it is located, may have a sign as provided in said paragraph (a) with an area of not more than two hundred sixty (260) square feet; and where such sign is placed on a building located on Lindbergh Boulevard there is permitted in addition thereto a free standing sign having an area of not more than one hundred twenty-five (125) square feet, located anywhere within the property lines of the premises.

(c) In addition to the signs permitted by paragraphs (a) and (b) of this section, such business establishment may have one window sign with an area of two (2) square feet for each ten (10) linear feet of window frontage on the street where displayed, but may have two (2) such signs in any event.

(d) When such building is located on a lot bordered by two (2) or more streets, or at the intersection of a street and an area used by the public for vehicular traffic, the signs permitted by paragraphs (a), (b) and (c) of this section shall be permitted on two (2) of such traveled areas. (Ord. No. 812, § 6, 1-21-63; Ord. No. 1197, § 1, 4-17-78)

#### **Sec. 35-9. Signs for office buildings.**

A building which is occupied to any extent as an office building or to any extent as an arcade building with business establishments not fronting on a public street may have the following signs, to wit:

- (a) Each commercial and industrial establishment occupying any portion of the ground floor of such building and facing a public street may have the signs permitted by section 35-10.
- (b) The occupants using a portion of the building for offices and those occupants having business estab-

lishments not fronting on a public street may have one sign for all such occupants giving only the name and address of the building, and the name and one business of each of such occupants. The area of such sign shall not exceed sixteen (16) square feet, and it shall be located on the wall of such building adjacent to the entrance thereto, or it may be a ground sign similarly limited as to area and content, located adjacent to or near the front property line of the premises. (Ord. No. 812, § 5, 1-21-63; Ord. No. 929, § 1, 10-16-67)

#### **Sec. 35-10. Signs for buildings other than office or arcade.**

(a) A building other than an office or arcade building which is occupied by more than one industrial or commercial establishment, may have one sign attached to such building for each such occupant facing a public street. All such signs shall be limited to a height of not more than two (2) feet and a length not to exceed six (6) feet and shall not extend above the wall height of the building except when located on top of the building; and no sign shall extend out over either end of the building.

(b) In addition to the sign permitted by paragraph (a) of this section each of said separate business establishments may have the window signs that are authorized by paragraph (c) of section 35-8.

(c) When the portion of the building occupied by such establishment is located on a corner of two (2) intersecting streets, or at the intersection of a street and an area used by the public for vehicular traffic, the signs permitted by paragraphs (a) and (b) of this section shall be permitted on each of such intersecting traveled areas. (Ord. No. 812, § 7, 1-21-63; Ord. No. 1197, § 1, 4-17-78)



**Sec. 35-11. Signs for churches, schools.**

Any church or school located in the city shall be permitted to erect one wall bulletin or one ground sign, neither of which shall be more than sixteen (16) square feet in area, when located on the premises occupied by such church or school. Such sign shall be limited to announcements relating to the name of such church or school, its services, activities or other functions, and shall be located so that it does not interfere with a motor vehicle driver's view of the public roads or of the driveway leading into or out of such church premises.

In addition, a church or school may erect a temporary sign during a continuous period of not more than sixty (60) days, subject to the same limitations as to area and announcements. (Ord. No. 812, § 8, 1-21-63)

**Sec. 35-12. For sale signs.**

It shall be permissible for the owner or authorized agent of premises to erect a ground sign advertising the sale or rental of the premises upon which it is maintained; but such sign shall not be attached to any tree, fence or utility pole, shall contain no other advertising matter and shall be not more than two (2) feet in height by three (3) feet in length.

The term "premises" as used in this section means any recorded lot or tract of land of not less than the minimum area required for building purposes in the zoning district in which such lot or tract is located under the provisions of the city's zoning ordinance or any lot excepted for legal reason from the minimum area restriction provided by such ordinance. Where an undivided tract of land is large enough to be subdivided into two (2) or more lots under the provisions of the zoning ordinance, such sign may be placed on each such lot into which it may be legally possible to subdivide such tract of land. (Ord. No. 812, § 9, 1-21-63)

**Sec. 35-13. Illuminated signs.**

No one shall install or maintain more than one illuminated sign among the signs permitted by this chapter, and no sign shall be illuminated otherwise than by electricity. All illuminated signs shall be constructed entirely of metal or other incombustible material, except the insulation thereof, including the uprights, supports and braces for the same, and if on a building shall be properly and firmly attached to the building and constructed so as not to be or become dangerous. The illumination provided shall be limited to the minimum amount necessary to allow the text of the sign to be read. Such sign shall be illuminated only during the business hours of the sign user. (Ord. No. 812, § 10, 1-21-63; Ord. No. 1291, § 1, 12-16-81)

**Sec. 35-14. Roof signs.**

Every roof sign shall be constructed entirely of steel construction, including the upright supports and braces of the same, and must be so constructed as to withstand a wind pressure of not less than thirty (30) pounds to the square foot of area subject to such pressure. When a roof sign is erected on a building which is not constructed entirely of fireproof materials, the bearing plates of said sign shall bear directly upon the masonry, walls, or upon the steel girders which are supported on the masonry walls and intermediate columns of such building. All roof signs shall be thoroughly secured to the building upon which they are installed by iron or metal anchors, bolts, supports, chains, stranded cables, steel rods, or braces. (Ord. No. 812, § 11, 1-21-63)

**Sec. 35-15. Free standing, ground signs.**

No free standing or ground sign (other than banjo signs of gasoline filling stations) shall be at any point more than fifteen (15) feet above the ground level, and



every such sign shall have an open space of not less than two (2) feet between the lower edge of such sign and the ground level. All ground signs shall be designated and constructed so as to be safe from falling and to withstand wind pressures of not less than thirty (30) pounds to the square foot of area subject to such pressure. (Ord. No. 812, § 12, 1-21-63)

**Sec. 35-16. Prevention of corrosion.**

All signs which are not galvanized or constructed of approved corrosion-resistive, noncombustible materials shall be painted whenever necessary to prevent corrosion. (Ord. No. 812, § 14, 1-21-63)

**Sec. 35-17. Maintenance of premises near sign.**

It shall be the duty and responsibility of the owner of, or person maintaining, a sign to maintain the immediate premises occupied by the sign in a clean, sanitary and healthful condition. (Ord. No. 812, § 14, 1-21-63)

**Sec. 35-18. Notice to remove unsafe sign.**

When any sign becomes insecure, in danger of falling, or otherwise unsafe, or if any sign exists or is installed or maintained in violation of the provisions of this chapter with respect to construction or safety, the owner, person or firm maintaining such sign shall correct the deficiencies or violation or remove the sign within ten (10) days after receiving notice from the city clerk; provided, however, that if such sign constitutes an immediate danger to the public health, safety or welfare, the building commissioner shall order immediate correction or removal of such sign. (Ord. No. 812, § 14, 1-21-63)

**Secs. 35-19—35-27. Reserved.**

**ARTICLE II. PERMIT**

**Sec. 35-28. Required.**

No sign shall be erected, constructed, painted or placed upon any building or premises within the city until a permit therefor has been issued by the city clerk. (Ord. No. 812, § 13, 1-21-63)

**Sec. 35-29. Application.**

No sign permit shall be issued until after an application therefor has been filed with the city clerk accompanied by duplicate scale or dimensional drawings showing the plans and specifications, dimensions, the material of which said sign is to be constructed, the details of construction thereof, including loads, stresses, and anchorage, the estimated cost thereof, and in the case of ground signs the proposed location with reference to street lines and the walls of adjacent buildings, if any. When a proposed sign is to be attached to a building or other independent structure, the drawings shall show the position of the sign on the supporting structure, the method of attachment to such structure and the character of the structural member to which such attachment is made.

All applications for permits to erect signs shall be filed by the owner of the premises, or shall be accompanied by written consent of such owner, the lessee, or agent of the property upon which said sign is to be erected. (Ord. No. 812, § 13, 1-21-63)

**Sec. 35-30. Permit fee.**

A permit fee of ten dollars (\$10.00) shall be paid to the city clerk in connection with each application under this article for a sign of fifty (50) square feet or less, and twenty-five dollars (\$25.00) for a sign of more than fifty (50) square feet, except those relating to an authorized church sign or a school sign on public school property. (Ord. No. 812, § 13, 1-21-63)

**Sec. 35-31. Issuance.**

The city clerk shall not issue any permit under the provisions of this article until he has determined that the provisions of this chapter have been complied with and the building commissioner has approved the plans and specifications as complying herewith. (Ord. No. 812, § 13, 1-21-63)

**Sec. 35-32. Appeal upon denial.**

Anyone applying for a permit for a sign under the provisions of this article whose application has been denied, may appeal to the city council for the issuance of such permit. (Ord. No. 812, § 18, 1-21-63)

**Sec. 35-33. Additional regulations.**

The city clerk may prescribe suitable regulations consistent with the provisions of this chapter concerning the form and contents of all applications for the permits herein required. (Ord. No. 812, § 13, 1-21-63)

**Sec. 35-34. Inspection of signs.**

All signs requiring permits shall be inspected annually by the building commissioner or someone appointed by him for such purpose. The owner of each sign requiring inspection shall pay the city an inspection fee of ten dollars (\$10.00) per sign of fifty (50) square feet or less, and fifteen dollars (\$15.00) per sign of more than fifty (50) square feet; such inspection and fee payment to be made prior to March first of each year. Signs on which inspection fees are not paid within thirty (30) days after due date may be removed by the city and the cost thereof charged to the owner or person or firm maintaining such sign. (Ord. No. 812, § 15, 1-21-63; Ord. No. 1311, § 1, 12-6-82)

**Sec. 35-35. Application to existing signs.**

The provisions of this chapter shall apply to the continuance, alteration, reconstruction, construction and maintenance of all signs within the city. In the event any sign now exists within the city which is in violation of the provisions of this chapter, it shall be the duty of the owner and also of the occupant, tenant or lessee of such premises to remove such violation so as to make all such signs conform to and comply with the requirements, provisions and limitations of this chapter within thirty (30) days after the effective date of this Code; provided however that the size limitations provided in this chapter shall not apply to presently existing signs attached to the exterior of a building. (Ord. No. 812, § 17, 1-21-63)

## EXCERPTS FROM DEPOSITIONS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

Civil Cause No. 90-2396-C-7

MARGARET P. GILLES

v.

CITY OF LADUE, EDITH J. SPINK, MAYOR OF THE CITY  
OF LADUE; THOMAS R. REMINGTON, GEORGE L. HENS-  
LEY, GALE S. [sic] JOHNSTON, JR., ROBERT A. WOOD,  
ROBERT D. MUDD, GEORGE FONYO, AS MEMBERS OF  
THE CITY COUNCIL OF CITY OF LADUE

## DEPOSITION OF MARGARET P. GILLES

[4] Q Would you state your full name for the record,  
please?

A Margaret Piffer Gilles.

Q Ms. Gilles, where do you reside?

A 40 Willow Hill.

\* \* \* \*

[7] Q So we can agree that it's principally a residential  
suburban community?

A Yes.

Q Why did you choose the City of Ladue when you  
came back to this area?A I looked at several houses. I liked the house. I  
liked the neighborhood. I loved the trees. It was very  
convenient. Very easy to get around from, I liked it.

\* \* \* \*

[10] Q I'd like to ask you first of all, how many resi-  
dents are there in Willow Hill Subdivision?

A How many?

[11] Q How many homes, let me ask you that first.

A About 50.

Q Okay.

A I'm not sure, I mean I'm just, I'm thinking of  
numbers, I really, I never counted them.

Q What is the name of the lane that you live on?

A Willow Hill.

Q Willow Hill?

A Willow Hill Road.

Q All right. Is that a thoroughfare, would you call  
that a thoroughfare, heavily traveled thoroughfare?

A No.

Q Is it a residential street?

A Yes.

Q Can you tell me, does it inter-connect with any  
other streets, with any major streets?

A Well, with Ladue.

Q Any other major streets?

A No.

Q Any others?

A No.

Q Would it be a fair statement to say then that peo-  
ple using your street are using it for the purpose of get-  
ting into or leaving the subdivision?

A Yes.

[12] Q Not for the purpose of going through some-  
place else?

A Yes.

\* \* \* \*

[13] MR. MARGO: Would you explain that?

MR. SUMMERVILLE:

\* \* \* \*



Q All right. When did you form the decision in your mind that you would like to put the yard sign which is at issue, in your yard?

A Well, when I heard about the yard signs as part of the effort that St. Louis is forming for peace in the Persian Gulf, to really bring pressure upon the elective representatives in Washington to do something with this horrible situation, to stop the world from going to war.

Q Okay. Can you give me a calendar date or—

A —I don't remember exactly when it was, sometime in late November when I first heard there were going to be signs. I got mine in December.

Q Early December or middle December?

A Yes, around the 7th or 8th, the 7th of December, something like that, I don't remember the exact date, but I know we put it up on the 8th.

Q Okay. Who did you expect your audience to be for the message that you wanted to put on your sign?

A Whoever was driving through.

Q Can we agree that that would principally be the [14] residents of Willow Hills Subdivision and their social guests?

A And delivery men and people like that.

Q Would it be principally the residents of Willow Hill incidentally, and workmen, and tradesmen, and people like that?

A I suppose so.

Q Well, wouldn't you agree that the principal traffic in and out of there would be the people that live there?

A Yes.

Q Is that right?

A Right.

Q Why did you choose that method of expression?

A Because it's part of a city-wide effort and I wanted to be part of that.

Q Did you give any consideration at all to the alternative methods of communicating that message?

A I had written a letter to the Post which was not published. I had written to all of the elected officials and the Secretary of State Baker. I am so concerned about this issue that I was willing to do anything to get the word out.

Q Would you have been willing to put the same information on a piece of paper and xerox it and place a [15] copy on each of your neighbor's mailboxes?

A What I believe I said was I wanted to be part of the city-wide effort, that this is a campaign to raise public awareness and I chose to be part of that.

Q I'm asking about your answer when you said you would be willing to do anything.

A Yes.

Q Would you have been willing to put the same legend on a piece of paper and xerox it and distribute it in the neighborhood in the mailboxes?

A In addition to the sign?

Q I asked—

A —sure.

Q I'm asking why did you choose not to do that?

A Because this is a campaign which we started. We also are working on putting candles in the windows as a prayer for peace and we wanted to make a connection between the candle in the window, particularly this time of the year, as people decorate, put them up as decorations, and the importance for informing Congress about our effort. The importance of that candle is for peace, not just Christmas decoration, we wanted to tie the two together.

Q Did you give any consideration to telephoning your neighbors?

A No I didn't.

[16] Q Okay. And why not?

A I just didn't think about it.

Q And was that possibility available to you?

A Well, sure.

Q Was it a possibility also to knock on their doors and speak with them personally?

A Yes.

Q Okay. Did you consider that, strike that.

Do you believe that that method which you chose, that is to place a card in your front yard was more effective for any reason, or would be more effective for any reason than broadcasting the message you wanted to broadcast to the audience you wanted to reach and all the alternative methods, namely the telephone, direct contract, doing xerox messages or writing personal letters.

MR. MARGO: Can I ask a question, I'm not sure I understand your question, did they consider that?

MR. SUMMERVILLE:

Q Well—

MR. MARGO: —or did she consider this at the time?

MR. SUMMERVILLE:

Q Yes, did she consider that at the time she was doing this?

[17] A Yes because I could reach more people with the sign.

Q Why did you believe that?

A Because other people do drive in, guests, workmen, and they all see the sign.

\* \* \* \*

Q How much did you sign cost?

A Four Dollars (\$4.00).

\* \* \* \*

[42] Q Ms. Gilleo, there has been commentary in the press that you had another sign on another subject in your yard before the one that is in controversy; is that correct?

A Yes I did.

Q And what was the subject of that sign?

A Natural Streams, Save our Streams.

Q During what period of time did you have that sign up?

A A couple weeks before the November 6th election.

\* \* \* \*

[43] Q Okay. That's fine. Do you know of any instances where the Ladue Police have made any decision to waive the enforcement of the sign Ordinance based upon the nature of the message on the sign?

A No.

Q Do you personally know of any instances where the Ladue City Council has granted a waiver of the sign Ordinance to a resident for a yard sign?

A No.

\* \* \* \*

#### DEPOSITION OF THOMAS R. REMINGTON

[6] THOMAS R. REMINGTON,

of lawful age, having been produced, sworn and examined on behalf of the Plaintiff, deposes and says, as follows:

#### DIRECT EXAMINATION

#### QUESTIONS BY MR. GREEN:

Q State your name, please.

A Thomas R. Remington.

Q What is your occupation, Mr. Remington?

A I'm an attorney.

Q Are you a partner in Armstrong-Teasdale?

A I am.

Q Are you also a councilman for the City of Ladue?

A Yes, sir.

Q How long have you been a councilman there?

A Fifteen-plus years.

Q Does the Ladue City Council have a chairman?

A It has a president.

Q Or a president, I'm sorry.

A Yes, sir.

Q And are you the president?

A I am the president.

Q How long have you been president of the council approximately?

A Fifteen-and-a-half years.

\* \* \* \*

[8] Q Will you tell me what took place when you [9] arrived at the council meeting as it relates to the application, not to the other matters before the council?

A When I arrived at approximately 5:00 P.M. I believe the council was discussing another subject.

At the end of that subject, the mayor, who presides over the meeting, stated Mr. Remington is here now, we go on with the Gilleo matter. That's all I knew.

Then Mrs. Gilleo stood and made her application.

Q Okay. And what did she say?

A She identified herself as a resident of Willow Hill. She stated that she wished to have the council act on a variance for her sign. She read the variance provisions, I believe, that talked in terms of hardship and other circumstances.

She told the council of the theft of her first sign, the vandalizing of her second sign.

At some point, and I'm not sure whether this is all in order, she exhibited the sign to the council for our information. She said something to the effect that while she does not believe that signs should be a way of life in Ladue that she left very strongly about this issue and hoped the council would grant her Petition for a variance.

She gave us some information on her background. [10] I heard it as saying that she was a lawyer, but I may have heard wrong. I can't think of anything else she said herself.

Q Did you respond?

A Not immediately. The procedure is to let the Petitioner make her case, following which the mayor closes the public meeting.

So there was no response, which I recall, directly at the time of her presentation because others followed her.

Q I see. And then the vote came later; would that be correct?

A Yes, the discussion comes later and the vote comes later. We let the petitioners present their arguments before the council intervenes.

Occasionally there'll be a question from the council, but I don't recall any during the course of her presentation.

Q All right. Following her presentation and any other public comments made by residents of Ladue, did the council go into closed session or in any session?

A It did not go into closed session, no, sir.

Following the presentation by Ms. Gilleo and others, then there was dialogue between the council and those who had made the presentation as to their feelings [11] about the nature of this sign, what conflicts or what kinds of causes they would advocate be the subject of variances for the city.

Q Okay. Can you tell me, was that discussion amongst members of the council open to the public? In other words, was it done in—

A Oh, yes, sir.

Q —public?

A Yes, sir, absolutely.

Q And would you tell me to the best of your memory, and I realize you may not recall each detail.

A Uh-huh.

Q But to the best of your memory, could you tell me specifically what each member of the council said? And if you can't recall it word for word, just in substance.

A The only distinct recollection I have of those who spoke other than myself was Mr. Robert Mudd, Councilman from the Third District, stating that he felt that Ladue was the type of community that ensures its residents both the privacy, the freedom from having to observe signs, I think the papers quoted him as "We don't want to look like junk city."



He also, I think, questioned Mrs. Gilleo on whether she would advocate abortion versus nonabortion, [12] would these be the kinds. I don't recall her response to that.

Q I see. Did anyone else on the council, other than the one remark, did anyone make any other remarks, to the best of your knowledge?

A I recall no others other than the comments I made in presenting the motion. There may have been others. I just can't recall.

Q Based on, as I understand it, what Councilman Mudd said, the discussion seemed to center around the controversial nature of the sign. I don't mean to summarize or tell you what you said, but as I listened to you, the only comments I heard were comments concerning the controversial nature of the sign, he referred to the abortion issue and that.

Was that your recollection, too?

A I think not only controversial, but also multiplicity of signs should there be variations granted to the sign ordinance for a matter like this.

There was certainly some attention to give to—in Mudd's comments, I believe, to the aesthetics of multiple signs.

Q Do you recall what he said about the aesthetics?

A I think the newspapers recorded it. Something [13] about I don't want to drive home and be driving through junk city, something of that sort. Those words ring a bell.

Q Okay. Now, at the time that Mrs. Gilleo filed her application with the council, were there any other applications on file for private signs?

A I do not believe so.

Q So Councilman Mudd, I assume, was talking about the possibility in the future that if you allow this one sign, which is controversial, other people taking different

points of view might apply for more signs and that could result in what he called junk city?

Am I stating it correct?

A I think you're stating it fairly.

Q Do you know whether or not Councilman Mudd or anyone else on the council had made any studies or checked with other municipalities or done anything to determine if his concern was valid?

A I know of no such examination.

Q When he manifested his concern over the possibility that Ladue could become, or at least that section of Ladue could become junk city, did the other councilmen nod in approval or indicate any assent?

A I don't remember any such accreditation by others during the course of that dialogue.

[14] Q Were you, as president of the council, concerned that that neighborhood could become junk city?

In other words, was that a serious concern of yours personally as president of the council?

A Yes.

Q Okay. And what was that concern based upon?

A The concern was based upon my knowledge of the reasons why a number of people in those neighborhoods including Willow Hill, mine, others I've lived in prior, Briarcliff, Maryhill, their feelings about why they come to Ladue.

They come to obtain the peace and the privacy that Ladue's character, makeup, the way it has grown, the way it has developed with our zoning ordinances and other ordinances to provide an area of largely private streets where you're somewhat insulated from the controversies of the street corner.

Q All right. While I don't mean to bicker with you—

A Yes.

Q —over your statement or question your belief in what you've just said, what I want to ask is this: Wouldn't it seem to you that, from what you just said concerning

the interest of Ladue residents, generally, from your living there for many years and your experience [15] and so forth, desiring the peace and privacy of their neighborhoods and to be sign free, wouldn't that indicate to you that there probably would not result a junk city, based upon the attitudes of the people that you know and have spoken to?

In other words, what I'm hearing is that they are against signs, and thus the ordinance, and yet you and Councilman Mudd seem to be concerned about the proliferation of signs, which to me is the opposite of what the ordinance says.

A Uh-huh.

Q And I'm trying to reconcile those points of view in this question.

A I think that if we did not have the ordinance, and a controversial sign comes up which is inviting a lot of attention, that you would see other signs go up with contrary views expressed.

This is a far cry from the issues of war and peace or abortion or nonabortion, but I can recall when we were considering closing one end of Litzinger Road. I think we had more than four thousand pieces of mail on that subject, bitterly divided. I think signs would have gone up on that had we not had a sign ordinance, and I think that would have led to the kinds of things that we hope to prevent, invasion of the privacy people, [16] forced audiences, having to observe this on stretches of road, diversion of motorists' attention, are the kinds of things that I feel are the justification for the sign ordinance as it is.

\* \* \* \*

[21] Q Now, pardon the superlatives, but you are a very highly regarded lawyer with many years experience, and I know that following this meeting you must have

given your thoughts to the First Amendment issues that have been raised; would that be correct?

A That is correct.

Q Okay. Have you reached any conclusion based on you reach or experience, your meetings with council for the city and so forth, as to whether or not you see a potential problem here with respect to infringement on our client's First Amendment rights?

MR. SUMMERVILLE: Just object to the question for the Record, to the extent that it asks for an expert opinion. Since the Judge will be the expert in the law, to the extent that it seeks Mr. Remington's thoughts as a councilman, I have no objection, and as a lawyer, I do object to the question to the extent that it asks for an expert opinion.

Subject to that, you can answer.

A As I indicated to the council, I have a very strong feeling about the sanctity of First Amendment rights.

[22] I also feel they're not absolute. Fire in the theatre is a cliché, as you say.

Q (By Mr. Green) Sure.

A But it is probably at the far end of the qualifications.

My own feelings, with really inadequate research, with no time to research, is that there are three areas involved in our action statute and the aura of life in Ladue of modifying importance on that right. The right of privacy is one of people's reasons for living in Ladue or living in the quiet subdivision area, do not want to be captive audiences for neighborly disputes whether they're on a national scale, such as the Persian Gulf, or whether they're on the closing of Litzinger Road.

Secondly, I think given the types of streets and neighborhoods we have in Ladue where seventy-five percent of the roadways are in small subdivisions, narrow roads, many of them blocked by barrier horses, none of them with sidewalks, all of them children using the streets as the method of going to and from school, of playing neighborhood games, there is a legitimate safety issue concerned

with the placement of signs, which by their very nature are designed to distract attention, to draw attention. So that I think there is a second arena [23] where the First Amendment rights may have a qualification.

The third, and really least important, does not to me measure up to, in and of itself, a qualification of that right or the aesthetics of the matter. I don't think we have to explain what we mean by aesthetics. I think it's clear in other communities when you drive through the, quote, eyesore that these kinds of signs can provide.

Q I see. Do you believe that one sign affects the aesthetics of the entire city, or are you talking about a multitude of signs, and if indeed there would be a multitude of signs?

A Well, of course, a multitude is far, on the point of view of aesthetics, would be much more displeasing than one.

Q Okay. So you're really saying, and I don't mean to put words in your mouth, that if Mr. Gilleo's application was approved and she was permitted to put up the one sign that she wanted to put up, that Ladue would become junk city?

A If that were the end of it, that's a fair statement. I don't believe that would be the end of it.

Q As I understood you, again you'll check me if I misstate it, that you, as I understand it, that the [24] aesthetic issue by itself, putting aside the safety issues and the other issues would not outweigh an individual's First Amendment rights; would it?

A That's correct.

\* \* \* \*

#### DEPOSITION OF EDITH J. SPINK

[5] Q State your name please?

A Edith J. Spinks [sic].

Q Mrs. Spinks [sic], what is your occupation?

A I am Mayor of the City of Ladue.

Q Is that a full-time job?

A Well, I give full-time to it but it might not take that much time.

Q How long have you been the Mayor of Ladue?

A For 15 years.

Q How long—

A —since 1975.

Q How long have you been a resident of the City of Ladue?

A Since 1967.

Q Prior to the time that you were Mayor, did you hold any other position with the City of Ladue?

A Yes, let's see, I was the Councilwoman for the 3rd Ward which is the area south of Clayton Road. In the west part, from 1970 to 1975.

\* \* \* \*

[14] Q Okay. You were here during Mr. Remington's deposition?

[15] A Yes.

Q Is that correct?

A Yes.

Q And I believe he testified, and you tell me if you don't agree, he testified that in terms of aesthetics he did not believe that aesthetics was a sufficient reason to overcome someone's First Amendment Right, do you agree that that's what he said?

A Yes.

Q You agree with him?

A I think aesthetics could be added into other violations such as privacy, safety and it's what you would consider to be in the public interest, welfare, public interest.

Q By aesthetic itself, it would not rise to that level, that is necessary to overcome a First Amendment Right?

A No.

Q You agree?

A I'm agreeing, yes, I'm sorry.

\* \* \* \*



[19] A I still say this is speculative because I didn't. I didn't consider this because I did not vote on it, all I did was conduct the meeting and the Council voted on it.

Q Let me take a step back and ask you if you considered this sign controversial?

A If I did or I do?

Q Do you?

A I do consider it a controversial sign.

Q Would that go into your factors in deciding whether to issue a variation if that occasion arose?

MR. SUMMERVILLE: I'll object.

MR. MARGO: Q And we'll let your objection run.

MR. SUMMERVILLE: Well, let my objection as to speculation run, subject to that you may answer.

A Yes it would.

MR. MARGO: Q Would the fact that the sign is controversial going to your factors in deciding to issue a variation under the element of necessary, unnecessary hardships, that the Ordinance contains?

MR. SUMMERVILLE: Same objection, go ahead.

[20] A Well, I just can't, I believe in freedom of speech and I have a very difficult time separating the unnecessary hardships or the practical difficulties when it comes to safety and privacy. It's all entered into as to whether or not I felt this would, people would have to be reading the sign and would perhaps have an accident because of their reading the sign. They may run into another car or hit a child. Run into a mailbox.

MR. MARGO: Q How do you, if you do, how do you distinguish between this sign on the one hand for instance, and a for-sale sign which we have all agreed the City allows?

A Well, I think that for-sale signs are signs that people are accustomed to seeing, but I also feel that a for-sale sign, usually for-sale is just two words and unless you're really interested in buying a house, it doesn't make any difference as to who the real estate agent is and all the

other information on it, what it is, you're only interested in, that it is for-sale.

Q So for-sale is two words?

A Two words.

Q Okay. If this sign had said Peace Now, would that be the kind of sign that you would consider to issue a variance to, because it would not be that much of a distraction?

[21] MR. SUMMERVILLE: I'll object to the form of the question, it calls for a hypothetical, subject to that you may answer.

A That can be controversial because you don't know what peace they are referring to.

MR. MARGO: Q So peace now because it's controversial would also be controversial?

A I don't know what they're talking about, what peace are they talking about?

Q Okay.

A People could have, they could be talking about a peace-time war, I mean there is no war going on in Saudi Arabia, the forces are there but, you could talk about actions in South America or anyplace.

Q Again I don't want to put words in your mouth but would it be a fair statement that in your mind Peace Now would be controversial, and so you would not issue a variance?

MR. SUMMERVILLE: Same objection but go ahead and answer.

A It would all depend, I can't say. It would all depend on what people we are talking about, when you say Peace Now what is that, what is that bringing to people's minds?

[22] MR. MARGO: Q What if it said just peace?

A Peace?

Q Yes.

MR. SUMMERVILLE: I'll object to the form of the question, once again, it's a hypothetical, calls for specula-

tion, it was really calling for speculation, there's no foundation that she ever voted on a variance on a sign ordinance, it calls for pure speculation on her part. Without any more facts, I mean we would need a lot more facts to try to answer that.

MR. MARGO: Q Are you instructing her not to answer?

MR. SUMMERVILLE: No I'm not, but you're going a little bit further, you're asking a hypothetical, calling for speculation.

MR. MARGO: Q I believe she testified that as Mayor she has been given the charge of unholding the Ordinance, and I'm trying to go about finding out how she goes about that.

MR. SUMMERVILLE: I understand that.

A I would have to turn down any kind of a sign, unless Council approved it.

[23] MR. MARGO: Q Okay.

A No matter what it said.

Q But I guess I am asking for your opinion, what about the sign that just says peace, controversial or not controversial.

MR. SUMMERVILLE: Let me just make sure I understand the question, are you asking her to apply the tests that she told you about, to go through in her own mind based upon those facts whether or not she would approve it, hypothetically, if she were approving it?

MR. MARGO: Q Sure.

MR. SUMMERVILLE: If you're able to do that, I'll object to the form of the question but go ahead and answer.

A I have a difficult time until I know just that I'm talking about.

MR. MARGO: Okay.

A Let me just say this. This is the time of year, peace and good will toward men, but it all depends on whether this is a Christmas message or what.

Q Let me ask you this. Just with regard to your concern for safety?

[24] A Right.

Q That it's a distraction?

A Right.

Q Without any regard to controversy at all?

A All right.

Q Just with regard to traffic safety, would the sign that says peace be objectionable?

A It could.

Q Under what circumstances?

A If they were, you mean just one sign?

Q Sure.

A And are you considering other people having signs too or just one person?

Q Just one person.

A Well, it would all depend upon where the traffic barrier was, how wide the road was, was it on a curve or on a hill, there are a lot of safety measures that enter into it.

Q Let me ask you, would your answer be the same if it said Merry Christmas?

A Yes.

Q As you sit here today, can you think of any sign that you would vote in favor of a variance to be placed upon a residential property, where the public interest would be best served?

[25] MR. SUMMERVILLE: I'll object to the form of the question, it calls for speculation, go ahead and answer if you haven't answered, do you have answer?

A Well, free the hostages or—

—I would hate to see it all over the City of Ladue, but, to give up dope or you know, narcotics kill?

Q Without putting words in your mouth, are you saying those are signs that might be included to issue a variance for than a Stop-War-in-the-Persian-Gulf sign?

A Or one that says Right to Life or Women's Lib



or many things, it's not just Stop War in the Gulf.

Q So I'm correct then when I say you would be more likely to issue a variance for a Bring Home the Hostages sign, rather than some other, like abortion sign, or a war sign?

A Well, if it, it would require a great deal of investigation on my part, to determine what the sign looked like, whether it was going to be an eye catching one or would cause everyone to stop and look at it or whether it was just one that you could look at as you drive by and not take your mind off of your driving.

\* \* \* \*

#### DEPOSITION OF CHIEF CALVIN DIERBERG

[5] Q Would you state your name please?

A Calvin Dierberg.

Q And what is your occupation Chief?

A I'm Chief of Police for the City of Ladue.

Q How long have you been Chief of Police?

A Two years.

Q Prior to that were you with a police department?

A Yes sir.

Q In what capacity?

A Lieutenant.

Q And then you advanced when the former Chief left the department?

A Yes.

Q Is that correct?

A That's right.

Q How long have you been involved in police work?

A Since 1955.

Q And how long have you been with the City of Ladue as a police officer?

[6] A 1955.

Q Have you ever been in any other municipalities as a police officer?

A No.

\* \* \* \*

[18] Q All right. That's a fair objection, I'll try to work around it. You have mentioned two signs which were recently removed by the Police Department because they were private signs which were not authorized; is that correct?

A Yes.

Q To your knowledge with respect to those two signs, were there automobile collisions or other safety hazards, safety type accidents that occurred as a result of these two signs that were brought to your attention?

A I'm not aware of any accidents there at the time, no.

Q Okay. From the time that you became a police [19] officer in Ladue in the mid-1950's I believe up until today, as you sit here, do you know of any safety hazard created over the years by any sign that was placed on private property at all?

A Well, there was a sign, a real estate sign that had two signs actually, two signs on the corner of Conway and Warson Road with which would perhaps tend to obstruct the vision of people making a turn. Other than that I can't say.

Q All right. Did Mrs. Gilleo's sign obstruct the vision of a driver driving down the street, to your knowledge?

A Not to my knowledge?

Q And your concern I take it then and you correct me if I'm wrong, but the controversial nature of the sign would draw a driver's attention to that sign, and that driver could momentarily or for some longer period of time, could take his eyes or her eyes off the road; is that correct?

A That's true.

Q Do you have other than this safety hazard that you have just discussed in answer to my last question, do you have any other safety problems with the placement of a private controversial sign on a residence front lawn?



A Well, by her doing it it apparently generated [20] some phone calls that she did not desire, other than that, no.

Q Does Ladue have an ordinance which prohibits or makes it an offense for someone to steal property that does not belong to them?

A Yes sir.

Q You are aware of course that the State has felony and misdemeanor laws concerning stealing?

A Right.

Q Does Ladue have a peace disturbance and trespass law?

A Yes they do.

Q Do you believe those three laws that I have just mentioned are adequate to cover the situation that was presented to you with respect to Mrs. Gilleo's problem regarding the missing sign and the telephone calls?

A I'm sorry, would you rephrase that?

Q Certainly. I think we can agree that Ladue has numerous ordinances that cover offenses by people; is that correct?

A That's correct.

Q And that would include theft, it would include peace disturbance, it would include trespass. Would it also include harrasing phone calls?

A Yes.

[21] Q Okay. How many police officers do you have in the Ladue Police Department at this time?

A Thirty.

Q Is that the number of police officers in your judgment, adequate to police the City of Ladue?

A Yes.

Q Okay. And you have sufficient armanent and guns and weapons and things, police cars and other aides to adequately police the City of Ladue?

A Yes we do.

Q All right. In fact the City of Ladue Police Department is considered one of the best in the area; is it not?

A Yes.

Q Okay. Do you believe that the ordinances that I have just indicated before covering offenses in the City of Ladue, are adequate to cover the problems that arose with respect to the missing sign and the hang-up phone calls?

A Yes.

Q As I understand it you did not consider the fact that a sign was missing and the fact that a complaint was made about several telephone calls where the caller hung up, would be significant enough for you to assign any police officers to Ms. Gilleo's home at that time or anytime afterwards?

[22] A No I did not.

\* \* \* \*

[31] Q Just a couple more questions. There is a sign just east of the police station, at least I think it's east at the Bogey Club that says No Turns, are you familiar with that sign?

A Yes.

Q Is that a sign that was either approved by the Council or exempt from approval, do you happen to know that?

A I cannot tell you whether it was approved by the Council. I would say it was a directional sign and therefore probably is covered under the Ordinance.

Q As exempt?

A Yes.

Q Would your answer be the same with respect to the sign on Barnes Road as you entered the St. Louis Country Club Grounds that says No Trespassing, if you recall the sign, it's posted on a post I believe.

[32] A It's probably or possibly could be construed as directional.

Q Tell the people to keep off the property?

A Yes, under Paragraph B Subdivision signs of a permanent character and road signs for danger, correction or identification.

Q And then you would construe that sign again I'm really—

A —yes I would construe that as, that way.

Q That way, is that correct?

A As permissible.

Q Okay. Permissible because it's exempt from getting a permit or because the permit was received?

A I would say the sign was exempt under the exempt section.

\* \* \* \*

#### DEPOSITION OF SALLY H. GULICK

[5] Q Would you state your name, please?

A Sally Herman Gulick.

Q Ms. Gulick, I understand that you are a resident of the Willow Hill Subdivision.

A I am.

Q Living at No. 30.

A Yes.

Q Let me just tell you that you need to say yes or no in order for the reporter to take down your response. I also understand that you executed an Affidavit a few days ago, three page Affidavit which proports to be signed by you. Did you execute that Affidavit?

A What do you mean by execute?

Q Did you sign it?

A Yes.

Q Okay. Does the Affidavit contain your words or were these the words someone else wrote down and you looked at?

A They were someone else's words that I—

[6] Q —whose words were they?

A Mr. Remington and his assistant.

\* \* \* \*

[10] Q Well I'm trying to determine what is your problem with signs in the neighborhood, can you tell me?

A I personally feel that I do not care to come home and see signs on people's yards with their opinions expressed on them.

Q Okay. Let me ask you first about the signs and then the opinions. With regard to just a sign, let's say it was blank, would that be a problem for you?

A Yes.

Q And am I correct that that problem is it's aesthetically unpleasing?

A I think it's a distraction.

Q Okay.

A I live in a small narrow street and there are children playing in the street and if you put up a distraction it's going to detract from their watching the road.

\* \* \* \*

[11] Q Other than a distraction, are there any other reasons that you are in favor of not having signs?

A Yes, I guess what you mean is do I object to it in terms of beauty of the neighborhood—

Q —okay—

A —I would prefer that there was not a sign there.

Q Okay. So, can we agree that it's aesthetics it's not pleasing to you to see it?

[12] A Yes.

Q Okay. Any other reasons?

A No.

Q Let me ask you if you've ever seen residential for-sale signs in your neighborhood?

A Yes I have.

Q Are those a distraction?

A I know it's a distraction, yes, I, I, yes, they are a distraction but they're not one that's going to cause a motorist to slow down and try to read it and cause them to take their eyes off the road so that they're not watching children playing in the street.

Q Wouldn't you agree that the very purpose of a for-sale sign is to distract somebody to pay, so that they pay attention to the house for sale?

MR. SUMMERVILLE: I object to the leading and suggestive form of the question and if she's not a party you're not entitled to lead her. I object to the form of the question.

MR. MARGO: Q You may answer.

A Could you repeat the question please?

Q Would you read it back?

(Previous question read back by Court Reporter)

REPORTER: [13] Would you agree that the very purpose of the for-sale sign is to direct somebody so that they pay attention to the house that is for sale?

A Yes.

MR. MARGO: Q And with regard to aesthetics, would it be your testimony that a for-sale sign is pretty or not pretty, how would you determine?

A I consider a for-sale sign a necessary evil of having your house on the market and trying to sell your house.

Q So am I correct that you're willing to put up for lack of a better term, an ugly for-sale sign but not an ugly sign that states somebody's opinion?

A Correct.

\* \* \* \*

[21] Q Let me ask you if, well let me ask you first, do you know the residents who live at No. 5 Willow Hill?

A Yes.

Q Are you aware that they have a sign on their front lawn?

A I was as of a week ago.

Q Okay, and it's a sign, it's a Santa Claus carrying packages, isn't it?

A Yes.

Q And it says Dear Santa, Julie lives here.

A Yes.

Q Do you find that objectionable?

A It's considered a sign, no I do not.

Q So then the problem is what the sign Mrs. Gilleo wants to put up says, isn't it?

MR. SUMMERVILLE: I object to the leading and suggestive form of the question, subject to that you may answer.

A Would you repeat the question please?

MR. MARGO: Q The question is isn't the problem that you've got with Mrs. Gilleo's sign what it says?

A It is of a controversial nature, that is true.

Q And that's your problem?

[22] A Well she had a sign up about the Natural Streams Act and we didn't say anything, nobody said anything because we knew it would be taken down.

Q So, what?

A Sort of the way I feel about the Santa Claus or I guess I know it's coming down, it's like a yard card on someone's birthday, it will be up and then it will come down and everyone minds their own business and pretty neighborly so we don't say anything.

\* \* - \* \*

[23] Q Let me rephrase it then, maybe I can take care of his objection. Would you say that the principal reason you object to Mrs. Gilleo's sign is that it's controversial?

A Yes.

\* \* \* \*

[27] Q I only have one more question. Mrs. Gulick, when, how is it that you got involved in executing this Affidavit, did you call, take some action to get involved or did someone call you?

A Someone called me.

Q Who would that be?

A Mr. Remington, he called me for my opinion and for opinions of some of my neighbors because he knew I was a Trustee.



Q Who are the other Trustees?

A Bill R-e-i-s-n-e-r and Larry Stacy.

Q And—

A —Stacy is S-t-a-c-e-y.

Q Thank you. Now in this Affidavit, are you speaking on behalf of the Trustees or just on your own behalf?

A The Affidavit that is mine.

[28] Q Did you confer with Mr. Reisner or Mr. Stacey about this situation?

A Immediately.

Q And what did each one of them say?

A They are in support of the fact that we do not want signs in our neighborhood.

Q Any signs or this particular sign, did you discuss that?

A Signs that are of a, have an opinion on them.

Q So am I correct then that the discussion was that the three Trustees agreed that they did not want signs in their subdivision that contained an opinion?

A Correct.

\* \* \* \*

[37] Q Okay. Would you tell me please starting with the [38] first conversation you've ever had with Mr. Remington or Mr. Summerville, everything that they sent to you about this case?

A Mr. Remington called me on Wednesday afternoon and asked me as a resident of Willow Hills and as a Trustee what I thought and what the neighborhood thought, if I could get a feel of what people thought and I said yes. I called him back and said most people do not want signs in this neighborhood, a few that I have managed to talk to this evening. So I signed that Affidavit on Wednesday stating I personally do not want signs for these reasons and then I was told that was Wednesday and the hearing was Wednesday afternoon. Thursday, no that was, the hearing was Thursday, and Friday morning I was informed I had to go to court, by Mr. Remington, that I was being asked to go to court and then not being

very familiar with this whole process Jay Summerville was brought in to help me understand what was going on. I was served a Summons Friday afternoon and that was done Friday afternoon, and here we are today.

Q All right, when was the meeting at your house held?

A Friday afternoon.

Q What did Mr. Remington say at that meeting?

A He explained to everyone what was going on—

Q —can you be a little more specific than that?

[39] A Just that a suit was being filed against the City of Ladue because of the—

Q —did he say who was filing it?

A Yes, and that this was very important because we do not want to tramp on people's freedom of speech, nobody wants to do that. But what we're objecting to is the sign, we don't want to make it any bigger than it is.

Q Did the controversial nature of the sign come up in this discussion?

A Only because it caused Margaret to go to the City of Ladue and say I need police protection, my signs are being vandalized, they just brought it was brought to their attention that if she could possibly come to me as a Trustee first this all might not have happened.

Q Did Mr. Remington say anything about the controversial nature of the sign leading to trespassing and vandalism?

A That was in the newspaper article and everybody had read that.

Q Right, I want to know if Mr. Remington addressed that topic?

A I believe so.

Q Okay, and Mr. Summerville?

A No Mr. Summerville listened. This is—

Q —I'm sorry, are you finished?

[40] A I'm finished.

Q Did Mr. Remington say that he too believed that the controversial nature of the sign would lead to vandalism in your neighborhood?

A Yes.

Q And did he say that was a good reason for being against the sign?

A That was one of the reasons for it, yes.

Q One good reason.

A Yes.

(There was a brief pause)

MR. MARGO: Q How long did the meeting take?

A It lasted an hour.

Q Is there anything else that Mr. Remington said at that meeting that you haven't told me about?

A No I don't believe so.

Q Did anybody at that meeting other than Mr. Remington talk about the controversial nature of the sign?

A Yes.

Q Who?

A Sue Dorris and Ann Wolfing. I think that was it, yes.

Q Okay, what did Mrs. Dorris say?

A That she was opposed to Margaret's feelings.

[41] Q Did she say that it was the contents of what the sign said that she objected to?

A Yes.

Q And did she say that was the reason she didn't want this sign up in the neighborhood?

A Yes, that was.

Q And Mrs. Wolfing, what did she say?

A She was objecting to Margaret's feelings on the Persian Gulf as well.

Q That was the reason she wanted the sign taken down or not allowed to be put up?

A Well yes, yes.

Q Did anyone else at the meeting express that feeling?

A We really didn't discuss the Persian Gulf, we discussed signs versus no signs and the fact that there are other ways for her to express her feelings. That was the big issue at that meeting.

There were other ways for Margaret to go about it, that we looked the other way when she put up her Natural Streams Act and that was equally controversial at the time because we're neighborly, we're not controversial people, we mind our own business and we get along, and so that was what we were objecting to.

Why didn't she come to us first and why didn't [42] she, if she feels this strongly about something, anything, Streams or the Persian Gulf or anything there are other ways for her to express herself just please not with a yard sign.

Q Did anyone else to your recollection say anything about the controversial nature of the sign at this meeting?

A Only in the respect that it brought in vandals and trespassers and we certainly don't want that in our neighborhood.

Q Did anybody mention that what you needed was better police protection to prevent vandals and trespassing?

A No.

Q As you sit here today are you comfortable with the idea that nobody in your neighborhood was a vandal or trespasser with regard to this sign?

A I am. And I walked past it twice a day to go to school and I'm not so sure that it wasn't mud and rain because it was listing to the right for several days before it finally fell down.

\* \* \* \*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

---

Civil Cause No. 90-2396-C-7

MARGARET P. GILLES

v.

CITY OF LADUE, EDITH J. SPINK, MAYOR OF THE CITY  
OF LADUE; THOMAS R. REMINGTON, GEORGE L. HENS-  
LEY, GALE S. [sic] JOHNSTON, JR., ROBERT A. WOOD,  
ROBERT D. MUDD, GEORGE FONYO, AS MEMBERS OF  
THE CITY COUNCIL OF THE CITY OF LADUE

---

Be It Remembered that on the 26th day of December,  
A.D., 1990 before the Honorable Jean C. Hamilton,  
United States District Court Judge, the following proceed-  
ings were had in the above styled and numbered cause:

PROCEEDINGS

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TESTIMONY OF MARGARET GILLES

[6] Q Would you state your name please?

[7] A Margaret Gilles.

Q Are you a resident of the City of Ladue?

A Yes I am.

Q How long have you been a resident there?

A A little over a year.

Q Do you live in a subdivision there?

A Yes I do.

Q What is the name of that subdivision?

A Willow Hill.

Q Let me ask you if you've ever seen a sign like this  
one before?

A Yes I have.

Q Can you tell me, is this your sign?

A Yes it is.

Q When is the first time that you obtained a sign,  
either this sign or one like it?

A One like it in early December.

Q Do you know the exact date?

A I don't remember the exact date.

Q Okay. And that was the purpose that you obtained  
this sign?

A To place in my yard.

Q Where did you get the sign from?

A From the St. Louis Forum For Peace in the Persian  
Gulf.

Q Are you a member of that organization?

[8] A Yes I am.

Q And what was your thought in deciding to put this  
sign on the front lawn of your home?

A We are terribly concerned about the dire situation  
in the Middle East. I don't think anyone really wants to  
get engaged in a war. We felt that it was important that  
people let their elected representatives know and I know  
I had to be sort of pushed into write to your Congress-  
man, call your Congressman and we wanted to have a  
campaign to have everyone to get into this, to contact  
their Congressman.

Q Did you place that sign like that one in your front  
yard?

A Yes I did.

Q Do you remember the date?

A Yes, December 8th.

Q Okay. What if anything happened to that sign?

A It disappeared.



Q What did you do next?

A I got another one and I put it in my yard two days later.

Q Did anything happen to that sign?

A Yes, the next day I found it, it had been pulled out of the hole and thrown on the ground about ten feet from the hole.

Q Is that in fact, this sign right here?

[9] A That exact sign?

Q Yeah.

A No.

Q Okay. Were you concerned when your sign was pulled out of the ground?

A Yes I was.

Q Did you do anything?

A Yes, I called the police.

Q And who did you speak with?

A I don't remember exactly.

Q What did you say to the police and what did you hear from them?

A The first time I said, "I had a sign in my yard and it was stolen or gone" and the policeman came over and we talked about it and he said, "You want to make a report" and I said, "Yes, I want to report this".

Q Did there come a time that you became aware that Ladue had an ordinance preventing you from placing this sign on your property?

A Yes.

Q How did you find that out?

A Well, I actually had heard about an ordinance, but I'd had another sign up for about two weeks, before the last election, for natural streams, so I just thought that it was okay in my neighborhood.

[10] Q When you called the police did they tell you anything else about an ordinance?

A Yes, he said "There's an ordinance against it" and I said, "Well, I see" or something and then I got the

other sign, put it up again, called the police again and they said "There's an ordinance" and I said, "Alright, what can I do about this, I think I have the right to put the sign up" and they said, "Well you can come in and talk to City Hall".

Q Did you do that?

A Yes I did.

Q Do you remember the date?

A You mean which date did I first go in?

Q Yeah.

A The 12th of December.

Q Okay. Did you speak with someone there?

A Yes.

Q And what was that conversation?

A I said, "I want to put a sign up" and they said, "What does it say" and I told them what the sign said and they said, "Well you can't do that" and I said, "Can I speak to someone" and they said, "Yes, you can talk to Mr. Hankins" and they said, "Well he isn't here".

Q Do you know who Mr. Hankins is?

A The Clerk, I believe.

Q And what happened next?

[11] I said,—oh, they said, "Here's an ordinance you can go home and read it and come back the next day if you'd like".

Q I'd like to hand you,—

MR. MARGO: I think we've stipulated that that's a copy of the ordinance.

THE COURT: Why don't you mark it anyway, it will be easier in the record.

BY MR. MARGO:

Q Let me hand you what's been marked for identification as Plaintiff's Exhibit 2, do you recognize that document?

A Yes I do.

Q Can you tell the Court what it is?

A It's the ordinance regulating signs in Ladue.

Q Did you take that ordinance home and read it?

A Yes I did.

Q And what if anything did you do next?

A I came across Section 35-5, which says that,  
 "The Council may grant a permit required by this chapter and permit a variation in the strict application of the provisions and requirements of this chapter. Where there are practical difficulties or unnecessary hardships or where the public interest will be best served by permitting such variation."

[12] Q And when you read that section, did you decide to take action?

A Yes I did.

Q What did you do?

A I went back the next day and I pointed this to the person and I'm sorry I don't remember her name, in the City Hall. I asked to see Mr. Hankins and she said, "He isn't in," I said "Well, I would really like to put up a sign" and she said, "You can go talk to Chief Dierberg".

Q Did you?

A Yes I did.

Q What did Chief Dierberg say?

A He asked what the sign said, I told him. He said, "We can't allow that, there's an ordinance" and I pulled this out and I said, "Chief Dierberg, there is a section and I'm asking you for a permit because of unnecessary hardship, because I think a war would be about the most unnecessary hardship that we can have" and he said, "Well, it's my job to enforce the law as it stands, but you may come and petition the Council." He said, "Only the Council can grant you a permit".

Q Did he tell when to petition the Council?

A Yes, he said "Come in on Monday at four o'clock."

Q Okay. Did you go to a City Council meeting on Monday, at four o'clock?

[13] A Yes I did.

Q Okay. Do you remember the date of that meeting?

A The 17th.

Q And did you address the Council that day?

A Yes I did.

Q Okay. What did you say?

A I told them what had happened. I told them how I had put in a sign and it had been removed and how I had put in another sign, how I called the police, how I had then gone to the City Hall twice, that I had talked to Chief Dierberg and he had advised me to speak and that I was requesting the sign for unnecessary hardships.

Q Okay. Did anyone at the City Council meeting tell you that you hadn't properly applied,—oh, well let me ask you this first. Did you bring to the attention of the Council, Section 35-5?

A Yes.

Q Okay. Did anyone at the council meeting tell you that you hadn't properly applied for a permit?

A No.

Q What happened next?

A Well I first made this request and Mayor Spink said "We must wait for Tom Remington".

Q Okay.

A "Would you, could we postpone this discussion" and I [14] said "Sure" and I sat down.

Q Do you understand Tom Remington to be the President of the City Council for Laude?

A Yes I do.

Q Okay. Did there come a time when you addressed the City Council again, during that meeting?

A Yes I did.

Q Okay. And this time can you describe what happened?

A I made my request again, explained the whole thing again, why I wanted to put up the sign and then, some other people spoke.

Q Okay. The other people, were these people supporting your position?

A Yes they were.

Q And were these members of the community?

A They were members of Ladue, residents of Ladue.

Q Okay. Did the City Council take any action at that point?

A After I believe, four other people spoke, yes, Mayor Spink said, "Does anyone want to address this issue" and Mr. Remington said "Yes, he would address it" and,—

Q What did he say?

A Well, he said that he understood what I was asking, but that he did not want to take a chunk out of an ordinance that had served the City well.

[15] Q Okay. Did any of the other council members address the issue?

A Yes, Mr. Mudd did.

Q What did he say?

A He said "He didn't want to drive home through a thicket of opinions, that it would look like junk city".

Q In all, do you recall how long the City Council discussed your request for a variance?

A I guess about five minutes, I don't remember exactly.

Q Was there then a vote taken?

A Yes there was.

Q Can you describe that?

A Yes, Mr. Remington, I believe, moved to deny the permit. Someone seconded it, I'm not sure and then I think the Mayor called for the question, they all voted to deny the permit.

Q Is the Persian Gulf, a issue of the day, that you feel particularly concerned about?

A Yes I do.

Q What is it that you would like this Court to do?

A I'd like them to grant me an injunction to put up the sign.

\* \* \* \*

[16] Q Good afternoon Ms. Gilleo.

A Good afternoon.

Q Ms. Gilleo, could you describe for us very briefly, your educational background?

A Yes. I have a Masters Degree from Columbia University, in New York, a Bachelors, from Maryville College, here.

Q I take it, that you have lived in Willow Hill subdivision in Ladue, for just over a year, is that correct?

A That's correct.

Q Ms. Gilleo, obviously you're a highly educated woman, would you agree with me, that most of your neighbors in the Willow Hill subdivision share that characteristic?

A Yes, uh-huh.

Q Okay. And you obviously think about compelling world issues and absorb information about them and form opinions about them, is that correct?

A Yes I do.

Q Would you concede for me, that most of your neighbors in the Willow Hill subdivision, share that characteristic as well?

A Yes.

Q Okay. Can you describe for the record please, very briefly, what your subdivision is like?

A It's a very lovely subdivision, it's a dead-end street. I think there are about fifty houses, I'm not sure of the [17] I think there are about fifty houses, I'm not sure of the exact number.

Q Okay. Am I correct, that the only entrance to your subdivision, is off of Ladue Road?

A That's correct.

Q Okay. It is not a thoroughfare of any kind, is it?

A No.

Q Would you describe for me, what you expected your audience to be, with the sign; and I don't believe it's been identified.

MR. SUMMERVILLE: Do you want to give that a number?

MR. MARGO: At this point, I'd ask that the sign be identified as Plaintiff's Exhibit 1, and following the



cross examination, I'll move for them both to be entered into evidence.

THE COURT: Fine.

MR. SUMMERVILLE: No objection.

MR. MARGO: May I also ask, that from here on in, if we can agree that references to the sign mean exhibit 1?

MR. SUMMERVILLE: Of course.

BY MR. SUMMERVILLE:

Q I'm sorry, I think I think I asked you, whom you intended your audience to be, with the sign?

A Well, anyone who drove by.

[18] Q Okay. Would it be fair for us to assume, that the principal audience would be the residents of your subdivision, in the approximate fifty homes and their social guests?

A Yes, but there are also people who work for these residents.

Q Okay. I used the word primary. I'm sure that there are tradesmen who come to the subdivision, but it is not generally a public thoroughfare, is it?

A No, it's not a public thoroughfare.

Q Okay. And so your principal audience would be your neighbors and their guest, would it not?

A Yes and people who work in their homes.

Q Okay. Now Ms. Gilleo, nobody of course, questions the fact that you feel strongly about the issue that's the substance of the sign. Did you give consideration, before you put the sign up in your yard, to any alternative means that you might have, to communicate the same message to your neighbors?

A I wrote a letter to the *Post Dispatch*, the editorial section.

Q Let me ask you this, would it have been possible for you to have xeroxed the same message, "Say no to war in the Persian Gulf. Call Congress now" and even sign your name, Margaret Gilleo, fifty times and to de-

liver that to the doors of your neighbors in the subdivision?

[19] A Yes, it would have been possible.

Q And can we agree, that the cost for that, would have been nominal, less than ten dollars?

A Sure.

Q Okay. Would you concede for me, that you could have written a personal message and mailed it to each of your neighbors, in the fifty homes in the subdivision?

A Yes.

Q Did you have any reason to believe that your neighbors would not be receptive to either of those forms of communication from you, one of their neighbors?

A No.

Q Alright. Would it have been possible for you Ms. Gilleo, to have used the telephone for example and although it might have taken more time to make fifty or however many telephone calls were necessary, to call your neighbors?

A Yes.

Q Do you have any reason to believe, that with that personal kind of a contact, your message might have been even more effective and identifying you, as one of their neighbors, as the person who had this strong feeling?

A I don't know that it would have been more effective. It would have been a different way of doing it.

Q Okay. Do you generally find that the residents of the Willow Hill Subdivision are friendly, cordial, nice people?

[20] A Oh, yes.

Q As I'm sure you are?

A Yes.

Q Okay. Would you agree with me, that the neighbors that you have in Willow Hill, have available to them, newspapers of different view points, as well as radio and television and cable television?

A Yes.

Q To get news of the world, including opinions?

A Yes.

Q Okay. Did you consider, I believe you did say that you considered writing a letter to the editor, is that correct?

A I didn't consider it, I did it.

Q You did it, okay. Did you consider the alternative of possibly putting a bumper sticker on your car?

A I didn't consider it, I did it.

Q You did it, okay. And did you park your car in your driveway so that it was legible to people,—

A Yes.

Q —coming and going?

A Uh-huh.

\* \* \* \*

[33] Q Ms. Gilleo, when you obtained the sign that you placed in your yard, approximately how many minutes did it take you to hammer it into the ground?

A I don't know.

Q Did it take you more than five minutes?

A Oh, no, two or three I guess.

Q Okay. Mr. Summerville asked you if you had considered calling all your neighbors, do you think that would have taken quite a bit more time than hammering this into the ground?

MR. SUMMERVILLE: Objection, leading and suggestive.

THE COURT: Sustained.

BY MR. MARGO:

Q Do you have any estimate as to how long it would take you to call all your neighbors?

A Well, if I called fifty, times say, five minutes.

[34] Q Do you think it would take you longer?

A Oh yes.

Q Do you think it would take you longer to mimeograph fliers and send them to all your neighbors?

A Yes.

Q Also, Mr. Summerville asked you, if you had sent fliers to all your,—he mentioned sending fliers to all your neighbors or calling them on the phone.

A Uh-huh.

Q Do you believe that if you had done that, you would have reached their guest?

A No.

Q Do you believe you would have reached their employees?

A No.

Q Do you believe you would have reached the workmen, who come to their homes for repairs?

A No.

Q Do you believe you would have reached the delivery persons, who make deliveries in the neighborhood?

A No.

Q Do you believe you would have reached the city employees, who service your neighborhood?

A No.

\* \* \* \*

#### TESTIMONY OF THOMAS R. REMINGTON

[37] Q Would you state your name for the record?

A Thomas R. Remington.

Q Mr. Remington, what is your address, your residence address?

A 67 Pointer Lane, in the City of Ladue.

Q What is your business or occupation, sir?

A I'm an attorney.

Q Could you give us very briefly, your educational background?

A I'm a graduate of Princeton University and of Harvard Law School. I was also a Fellow at the University of San Andrews, in Scotland.

Q Okay. You're a practicing attorney at law?

A I am.

Q And do you practice with the law firm of Armstrong, Teasdale, Schlafly, Davis & Dicus?

A I do sir.

Q And are we partners?

[38] We are indeed.

Q Mr. Remington, do you hold any official office, in the City of Ladue?

A I do.

Q What is that office?

A I'm the Alderman from the 1st Ward and I'm also President of the City Council.

Q Alright. Can you tell me how long you have been Alderman of the 1st Ward?

A Fifteen and a half years.

Q And can you tell me, does that ward include the Willow Hill Subdivision, where the Plaintiff, Ms. Gilleo resides?

A It does.

Q Alright. How long have you been the President of the City Council of Ladue?

A The same period, fifteen and a half years.

\* \* \* \*

[41] Q Okay. Can you tell the Court how you regard the privacy and the tranquility and the peacefulness of the residential areas of your city, as they go, un-objective, how important is that?

A I'd say it's of the primary importance. It is the primary attraction of people to our city, is the residential character of it. The ability to leave the hussle and bustle of their jobs, whether they be lawyers or doctors or engaged in commerce, they come home in the evenings, they find a peaceful, quiet, safe, neighborhood. This isn't escapism it's a change and it's a change I think we all welcome.

Q Okay. In what ways, if at all, does the City of Ladue, through other ordinances, other than perhaps the ordinance [42] that we're considering in this case, try

to express that desire to maintain the privacy and tranquility of it's residential neighborhoods?

A I think the primary example here, would be our quite extensive and complex zoning ordinance.

\* \* \* \*

Q Yes, I was asking how does the City of Ladue generally, with it's other kinds of ordinances, other than particularly the one that we're engaged in considering in this case, try [43] to foster, if it does, those goals that you have testified about, preserving the privacy and the residential tranquility of it's neighborhoods?

A I've mentioned the zoning ordinance, there are others. There are the general provisions with respect to the police powers of the state over speeding, traffic control, that sort of thing. We have ordinances which attempt to regulate and constrain commercial activity to the commercial areas of the city and try not to let or allow commercial activity in the residential areas of Ladue.

Q Is the privacy of the residents of the City of Ladue a concern of yours, as a councilman?

A A very great concern.

Q Is the safety of the residents of the City of Ladue, a concern to you, as a councilman?

A A very great concern.

Q Is the maintenance of certain aesthetic quality, of importance to you, as a council member?

A It is also of importance.

\* \* \* \*

[50] Q Alright. Now could you describe, just very briefly, the organization of exhibit 2, the nature of the Sign Ordinance and how it is set forth, with respect to what it allows and does not allow and I mean in general?

A In very general terms, it prohibits the erection of signs in all areas of the City of Ladue and then, in one section creates a series of exceptions to that prohibition. It permits the erection of signs in certain instances. There are more difficult and longer provisions, which deal with



the categories of commercial signs, which can be erected in the commercial districts, defining the size, the placement, location, that sort of thing, of commercial signs.

Q Okay. Now, with respect to the applications for waiver, under Section 35-5, that you had considered in the past, can you tell me what discretion you believe that you had and how you exercised that discretion, in deciding how you would vote on any application for a variation?

A Well, I think I ought to start by saying, that the only applications we have had prior to Ms. Gilleo's, have been for variations in the commercial areas of the city. I can recall none that came to the council when I was sitting on it, that [51] dealt with the residential areas, or somebody's desire to put a sign in the residential area. The commercial applications have been quite frequent. We may hear from a shop keeper along Clayton Road, who the entrance to her shop is in the back of the building, that rather than just have a sign over her door, which will not identify where she is to people who are on the front of the building where most of the traffic is, we permit some type of sign along the front of the building or the side of the building, to identify that she is selling needle goods or something of the sort, in the back of the building. We also will have requests for variations in the size of the sign. Our sign limitations maybe very much too small for somebody who has a very large storefront and we do exercise our best judgment, to prevent the hardship that would come on that person of having a sign lost in the medley. The hardship that would come in not being able to identify your premises if it's in the back of the building. I think throughout, even in the commercial area, our concerns are with the general character of Ladue, as a low key city, private city. We do not permit garish signs, billboards with some lady with a diamond in her navel or something of the sort, to attract attention, because that's going to divert people's attention from doing what they ought to do on commercial streets, as well as residential streets and that's drive their cars

safely. We are also frankly concerned with [52] the aesthetics, but I think in the order of proceeding, we're first and foremost, committed to the privacy, the general aura of the community, secondly, the safety and third, the esthetics.

Q In applying 35-5, to determine whether a variation should be granted in the strict application of the sign requirements with respect to commercial signs, what did you interpret the scope of your discretion to be and how, if at all, did you believe it was limited?

A We feel that the, and I feel, that the variation provision in 35-5, is directed towards those signs which the city has identified in Chapter 35, as being permissible signs. Permissible albeit, with some restrictions as to size, placement, etc. This would include of course, all the commercial signs. It would also include somebody's attempt to vary the provisions as it relates to a For Sale sign or identification sign of name and profession. But we feel that it is directed towards those situations of commercial and the exempted signs, not to signs in general.

Q Okay. Did you interpret 35-5, to give you the discretion to grant a waiver to permit the erection of signs which are not otherwise permitted, of a type not permitted, by the ordinance?

A I do not feel that it does lead us to the ability to grant variances in those cases where the Sign Ordinance does [53] not permit the signs.

Q Now focusing your attention on Ms. Gilleo's application to the council, on December 17, 1990, I believe you've indicated earlier, that that was the first application that you were aware of, from a resident, for a waiver, under Section 35-5, for the erection of a placard in a front yard, is that correct?

A That is correct.

Q Alright. When you considered that application Mr. Remington, did you believe that you had the discretion under Section 35-5, to allow a waiver for a sign such as that Ms. Gilleo wanted to erect in her front yard?

A No, I did not feel we really had the discretion to go into the area of signs that were not called for under the ordinance and that's on reflection of and re-examination of the ordinance.

Q Okay. Now, leaving aside that belief, that you did not have the discretion, did you, as a resident of Ladue and as a member of the City Council, would you have favored the allowance of such a sign, as exhibit 1, in Willow Hill, in Ms. Gilleo's yard.

A I don't like such a sign, as,—

Q Well,—

A Any sign of any nature, in a residential setting, I would not favor.

[54] Q Alright. And could you give us your reasoning and your rationale for that position?

A Well the first and foremost, is what we've discussed already, the general nature of the community, the desire of it's residents for privacy. Second, I think safety considerations have to be brought into view. Any sign is an invitation to distraction. It is, by it's very nature, attempting to attract attention, some more verminously then [sic] others. So I think we would have to look at each sign, in connection with the safety implications. Third area, of course, is the esthetics. While I don't think that can stand on it's own, to prohibit a sign, I think it is something that we would, —given the other two considerations or a strong consideration for privacy or safety, we would also consider esthetics.

Q Okay. Now in giving your consideration as to whether you would vote for or against Ms. Gilleo's application for a waiver, did you give any consideration whatsoever, to the nature of her viewpoint, as expressed in exhibit 1?

A I did not.

Q Okay. Are political signs at the time of political campaigns and elections, allowed in the City of Ladue, by ordinance?

A They are not allowed.

Q Okay. And is that ordinance enforced by the Police Department?

[55] A Yes, I'm certain it is.

Q Alright. And to your knowledge Mr. Remington, does the Police Department make any attempt in the enforcement of that ordinance, to discriminate between Republican signs or Democratic signs or pro one side of an issue or against another side of an issue, at the time of an election, in removing signs from yards and enforcing the ordinance?

A I do not believe they do.

\* \* \* \*

[56] Q Okay. Can we agree and I think you so testified, that the issue of esthetics, standing by itself, should not, under any circumstances, defeat a person's First Amendment Rights?

A I have, —I would agree with that.

Q Okay. Can you tell me in what way your privacy could be invaded, so to speak, if a sign were placed on Willow Hill in front of the Plaintiff's home and you live on Pointer Lane, some quarter of a mile away, unless you drove over there to look at the sign?

A I think my privacy is not as greatly affected as those who are, not trapped, but those who are day after day, come in there. They're a captive audience. The privacy of those individuals is much more severely affected than I am.

\* \* \* \*

[63] Q Thank you. Did I understand correctly, that you now believe, as you sit here today and testify, that the council did not have discretion, under Section 35-5, to authorize a variance and issue a permit?

A That is my belief.



Q I see. Why then, did you permit the plaintiff to make a statement and to even file an application and request a variance?

A I think that's a fair question and I think the answers lies in the fact, number one, in the application of this law, we have never considered it or had it applied for, a variance under this section, on personal property. Secondly, in the throws of examining what's occurred over the last weeks, we've all done a lot of study and re-examination of that ordinance and as I look at it today and for the last several days, it seems to me, that the statutory scheme is as I've stated here this afternoon.

Q I see. So then, it took you several weeks of study and [64] review and discussion with your colleagues, to make the determination on exactly how that ordinance should be applied?

MR. SUMMERVILLE: Objection to the form of the question.

MR. GREEN: I'm sorry.

MR. SUMMERVILLE: I don't think there's been a reference to weeks.

MR. GREEN: I thought he said two weeks.

THE WITNESS: Two days.

MR. GREEN: Oh, did you say the last two days? I thought you said two weeks, I'm sorry.

THE WITNESS: The last two days.

MR. GREEN: Well, let me rephrase the question then.

THE WITNESS: Okay.

BY MR. GREEN:

Q So it took you several days, a lawyer with many years experience, discussions with your colleagues, careful review of the ordinance, especially Section 35-5, to reach a conclusion that differs from the conclusion you had reached when the application was filed and considered? Is that a correct statement?

A That is a correct statement, yes.

Q And is it because at least in part, that that particular [65] section of the ordinance is somewhat vague?

A I think that section of the ordinance is pretty clear. It's because the ordinance itself, is seven, eight, nine pages of rather complex do's and don'ts. And it's only through a fairly intensive review of that whole statutory scheme, that I've come to that conclusion.

Q Do I understand then, that if an application for a private resident sign, such as exhibit 1, were made today, you would not even permit the application to be considered by the council?

A I don't think Section 35-5, addresses this type of sign.

Q Alright. Is there any other section in the ordinance, that does address that type of sign?

A I don't believe so.

Q Okay. Can we agree then, that under no circumstances could a private residence put up a sign in their front yard, of any size, shape, character or otherwise? In your judgment, based upon the Ladue ordinance in question?

A Unless it came within the provisions of 35-2, which calls for certain exceptions to the prohibition against signs. It would be a relief from extending those further, with a good case made, I think that the council would consider it.

Q Did you consider the exhibit 1, to be a controversial sign when you discussed it at the council meeting on Decem- [66] ber 17th?

A I really didn't pay all that much attention to what the sign was saying. I believe it is a controversial sign. As I said, "Nuk Baghdad" would be one, but that was no basis for my action or opinion that evening, that the ordinance, even if we said it did apply to these things, is completely content neutral. It doesn't say you can have Republican signs, but not Democrat or vice versa. So, the character of the sign, I think I have to say in all fairness,



is controversial, but it formed no basis for the action that the city took that evening.

Q Okay.

A Or at least my action, I can't speak for the others.

\* \* \* \*

### TESTIMONY OF EDITH J. SPINK

[69] Q Would you state your name for the record please?

A Edith J. Spink.

Q Ms. Spink, where do you reside?

A At #9, Log Cabin Drive, in Ladue.

Q How long have you been a resident of the City of Ladue?

A Since 1967.

Q Are you presently serving as the Mayor of the City?

A I am.

Q How long have you held that office?

A Since April of 1975.

\* \* \* \*

[72] Q Ms. Spink, let me ask you first of all, what importance, if any, do you attach as Mayor, to the preservation of the privacy and tranquility and peacefulness of the residential neighborhoods of the city?

A I attach a great deal of significance to that. I have been very active as a volunteer and I'm at the City Hall, almost daily for six to seven hours. I see people on the street or when they come into the City Hall or at various business and social engagements. They attach a great deal of significance to the preservation of our safety and privacy and esthetics. I've been very active in beautifying the City of Ladue and I've had a great many compliments, particularly on the planting around City Hall, Clayton Road and the council has been very supportive in our esthetic efforts.

Q Now you mentioned that others have those priorities and goals. Do you share those goals of,—

A Yes I do.

Q —privacy, safety and esthetics?

A Yes.

Q Alright. In what ways as Mayor, do you seek to foster the privacy, the safety and the esthetics of the residential neighborhoods of the City of Ladue?

A Well we try to enforce our ordinances, relating to [73] those. We have adopted the *Voco* (phonetic) existing building law, so that anybody who's house needs repair, that we can get them to do that. I particularly, if I see a sign that should not, is not allowed, under our ordinances, I will call the police and report it; I have a telephone in my car, that is my own, not the city's and I can't tell you, but I've spent a great deal of my own money, calling the police to report unauthorized signs. I have several committees in the city, on which about a hundred and twenty-five residents serve and I find that Ladue is a very special community. Many people who have moved out west for instance, out on Mason Road and other places, have moved back to the City of Ladue, because they say that there you have the tranquility, not the large traffic problems and they just like our community.

Q Alright. Now you'd mentioned in your answer to my last question, that from time to time, you actually call into the police, to report signs which you believe maybe offensive to one of the city's ordinances, is that correct?

A That's correct.

Q Now, do you believe or have you believed, that yard signs of any nature, other than For Sale signs are permitted in Ladue on residential property?

A No they are not permitted.

Q Now have you had occasion in the past to call the police [74] to report yard signs of one nature or another, that you believed offended the sign ordinance?

A Yes.

Q Did those include political signs?

A Yes.

Q Did those include signs on issues of public interest of the day?

A Yes, one was on the Clean Streams Act.

Q Okay. And when you make those reports or have in the past, to your knowledge, have the police followed-up and gone to those properties and resolved the situation in one way or another?

A Yes, several times I've spoken to Chief Dierberg and maybe an hour or two later, he'll come in and say "You're right, the signs have been taken care of".

Q Okay. In any of those occasions, Ms. Spink, have you distinguished between signs, based upon the nature of the message on the sign? That is, whether it was on one side of an issue or on another side of an issue? Or a Republican sign or a Democrat sign?

A No. If I may be facetious, at the council meeting, I said, "even if someone wanted to put my picture on their lawn, that that would not be allowed," vote for me for Mayor.

Q Okay. Do you have any knowledge at anytime, Ms. Spink, when the Police Department has intentionally failed to en- [75] force the Sign Ordinance with the City of Ladue, with respect to any particular signs, on account of the particular point of view expressed on the sign?

A No.

Q Okay. Now having reviewed exhibit 2, ma'am, let me ask you first of all, whether you believed that yard signs, yard placards in residential neighborhoods, other than For Sale signs, are permitted by the ordinance?

A No.

Q Okay. Is it your opinion that they are not?

A My opinion is that they are not permitted.

Q Thank you. Now do you believe, based on your review of the ordinance, that the City Council of Ladue, has the discretion to grant a variance or a waiver of the requirements of the ordinance, under Section 35-5, to

permit a yard sign or a placard, on a residential lot, in the City of Ladue, other than a For Sale sign?

A No, on reflection, as I said, I had a great deal of time to study this over the last two days, I don't feel that you can grant a variation on any kind of a sign that's not permitted in the ordinance.

\* \* \* \*

[78] Q How important is esthetics to you?

A I think that esthetics are extremely important. That was one of my campaign pledges, that I would try to improve the appearance of Ladue and I think that we have done so, over the last fifteen years, with the help of the council. I can't do anything on my own. All I can do is make recommendations and then, the City Council approves or disapproves them.

\* \* \* \*

[82] Q And you're real concerned; and you may have expressed this to some extent, in the fact that there maybe this sign on the plaintiff's front lawn, it could result in what we'll call a proliferation of other signs, that would detract from the beauty of the city, because you would have a lot of signs all over. Isn't that basically a correct statement?

A Yes.

Q Okay. Now that would be what we refer to and have referred to during this hearing and the deposition, as the as the esthetics issue, isn't that correct.

A Yes.

Q Okay. Now the esthetics issue though, does not in any capacity, arise to the height of the First Amendment issue that we're discussing, does it?

[83] MR. SUMMERVILLE: Your Honor I'm going to object, that that asks for an expert legal opinion. I believe the Court will be the Judge of the law.

MR. GREEN: Only as to her belief.

THE COURT: You can ask it as to her belief.



THE WITNESS: I believe that sometimes the First Amendment can be overruled by other instances. Not that you are prohibiting anybody,—

MR. GREEN: Uh-huh.

THE WITNESS: —from speaking, but by the same token, I think that the Constitution guarantees the right to privacy and we're sworn to uphold the safety and the health and welfare of the community. It's like yelling fire in a crowded theater, you can't do that and that certainly is against freedom of speech.

\* \* \* \*

[84] Q What I'm really asking you is, you don't believe personally, that the issue of esthetics, that we've been discussing, rising anywhere near the level of an individual's First Amendment Rights in Ladue, do you?

A Well I really don't think that we are prohibiting somebody from expressing themselves, there are many other ways that they can do it besides having a yard sign.

[85] Q I see. Is it then your position, as I understand your views, that because there are other ways for plaintiff in this case to express herself on her views, that she should use those other methods and not this particular way, by putting a sign in her front lawn?

A I believe that.

Q Okay. And is it the fact that those other methods would not in anyway, interfere with the esthetics of Ladue, where the sign would?

A Well, it could interfere with the esthetics, if people threw them on the ground and didn't pay any attention to them, but normally I would say that it would not interfere with our esthetics.

Q Okay. When you say threw them on the ground, what are you referring to?

A Threw any, whatever, if she did it by pamphlets or some other way.

Q I see. So the esthetics issue; and I don't mean to beg the question and repeat myself too often, but that's your principal concern?

A That's a very important, —esthetics and right to privacy and the safety, because I think they're all wrapped in together.

Q I see. Can you tell me then, how the residents of Ladue, how their right to privacy would be affected in [86] any-way, by having a sign placed on the plaintiff's front lawn?

A Well, you might want to look out the window and all you see would be the sign. For instance, one of our neighbors wanted to put up a tennis court, in their front yard and every time we looked out the window, we would see somebody playing tennis,

Q I see.

A —and they asked for our permission and we and some of the other neighbors didn't give it.

Q I see. That would come under your deed restrictions and your,—

A No, it has nothing to do with our deed restrictions, it has something to do with our zoning.

Q Oh, I see.

A We don't allow tennis courts or swimming pools in the front yard.

Q I see.

A And it was the same idea, if you had to sit and look at something, a neighbor, that could interfere with their right of privacy.

Q Okay. That of course, would only apply to people living in the immediate vicinity of the plaintiff's home, would it not?

A That is true.

Q Okay. Were you and are you presently concerned about [87] any safety factor, if this sign, exhibit 1, were to be placed on the plaintiff's front lawn?

A Yes I am, because I'm concerned with Ms. Gil-  
leo's safety, it has already been stolen once, it's been



knocked down, I believe and she's had telephone calls that she doesn't know from whom they are and I believe that something like this could cause a problem for her, as well as safety problems for people who would come into to look at what the sign said, because of the publicity.

Q I see, okay. I believe you testified and used the phrase, that if there's a controversial sign, there could be arguments?

A There could.

Q Is that your view?

A Yes, I believe that. I've seen arguments at Winter Wonderland, where people have run over even a traffic barrier, that was placed in their yard, because they didn't like Winter Wonderland.

Q I see. When you use the phrase arguments, are you using that to mean essentially the same as the word debates?

A Debates, yes.

Q I see. And you would not want those types of debates in Ladue, in your neighborhood, would you?

A No, I believe they can have as many debates as they want, but I don't think we should encourage them. This is up [88] to the individual to discuss with other people however they feel about things.

Q I see. And then I take it, that you consider the sign itself, to be somewhat controversial, don't you?

A I consider it controversial, in the point, —because it was torn down. If it had not been torn down, I would not know whether it was controversial or not. Our ordinance isn't directed as to the content, it's directed, it's a neutral ordinance, that we would object to a sign that said "Support Your President."

Q I see. You would not object though, to a sign that said "Free the Hostages" would you?

A That was asked to me on a issue that I told you that I had not had an opportunity to study the ordinance. On reflection, I would object to any kind of sign.

Q Okay. But when your deposition was taken several days ago, I believe within the last two or three days, —

A Uh-huh.

Q —you testified, did you not, that you would not object to a sign that says "Free The Hostages" or one that says and I quote "Give Up Dope."

A That is if a residential sign was allowed. I had to read the ordinance and study it and find out that residential signs were, all residential signs were prohibited.

Q I see. When you made these statements as to the two [89] kinds of signs, that is, the content, which you would allow, "Give Up Dope" and "Free The Hostages," you were under the belief at that time, that the City Council could authorize private residential signs, weren't you?

A I, —from reading that section that you told me,—

Q Uh-huh.

A —I was under that impression. After re-reading them, I,—and I see, that you can only have a variation and that there's only certain signs that are permitted, I have changed my mind.

Q Alright.

A And if I told you, when we were having our deposition, this was all speculation on my part, that I had not had a chance to study it and that,—well, I'll say that's it.

\* \* \* \*

# TESTIMONY OF MARK G. ARNOLD

Q Mr. Arnold, would you state your name for the record?

A Mark G. Arnold.

[90] Q Mr. Arnold, where do you reside?

A 28 Willow Hill, in the City of Ladue.

Q Are you a neighbor of the plaintiff's?

A Yes, she's five or six houses down, I think.

Q What is your occupation sir?

A I'm an attorney.

Q Okay. And are you in private practice?

A Yes sir, I'm a partner with the firm of Husch, Eppenberger, Donohue, Cornfeld & Jenkins, in the St. Louis Office.

Q Could you give us very briefly, your educational background?

A I have an undergraduate degree from Oberlin College, in Oberlin, Ohio and a law degree from Washington University, in St. Louis.

Q Okay. Do you practice in any particular specialty, sir?

A I spend about half my time in litigation and the other half, in various Courts of Appeals.

Q Do you belong to any professional societies?

A Oh, the Missouri Bar, the Metropolitan Bar, I'm a member of the American Law Institute.

\* \* \* \*

[92] Q Okay. Could you tell us Mr. Arnold, why you chose to live in the City of Ladue?

A Well there were a variety of reasons. Those that I think would be relevant to the proceedings here today, the peace and quiet of the neighborhood, would be first and foremost. The feeling of safety and security, we had planned on having a family and a dog and so forth and that was important. I don't know how to quantify it, but I think the Willow Hill Subdivision is, at least in my estimation, a very beautiful subdivision and I remember the first time I was on the street, it was probably fifteen years ago, I went to a party there, when I was still living in the Tivoli Apartments and I thought I'd died and gone to heaven it was so nice, as compared to where I was. So those are the factors that I think would be relevant to what we're here discussing today. Obviously, there were others.

Q I direct your attention to exhibit 1, the sign which your neighbor would like to place in her front yard, in your subdivision. Mr. Arnold, how, if at all, do you believe that the placement of that sign in Ms. Gilleo's front yard, would affect the peace and quiet of your neighborhood, as you've described it?

A Well, I frankly would prefer that she did not put the sign up and the reason is, that the sign is, by it's very [93] nature, a kind of a controversial sign, that calls upon me, it forces itself upon me and says, you know, react, agree, disagree, says it's a better idea to send Sadaam back to the Stone Age, by thermonuclear device or alternatively, that what we're doing there, is all wrong. I would rather not be confronted with that kind of a controversial thought, when I drive into my subdivision at the end of the day. As I'm sure you know, the litigation practice, in which we are both engaged, encompasses a fair amount of contention and argument and struggling for mutual advantage and I would just as soon leave that at the office when the day is over. I guess the other point, at least the firm that I practice with, tends to be a fairly heterogenous group of people, in terms of their political viewpoints and it's not uncommon, you know, when five minutes in the lunchroom or to have lunch with some of my partners or associates and to have a political debate about the Persian Gulf situation or abortion rights or the *Nancy Kusann* (phonetic) case or anyone of another of topics of importance. And again, I enjoy that during the day, when the day is over, I like to feel that I'm off duty and I'd rather not have that sort of thing forced on my consciousness when I go home. I prefer to spend time with my wife and my kid and my dog.

Q Do you believe that Ms. Gilleo has available to her, any other methods of communication with you, that would be less [94] intrusive on your privacy?

A Well, does she have methods that will make me think and respond like this? I don't know that she does,



because if she were to telephone me, as soon as I found out what she was calling about, I would, I hope, politely, suggest I wasn't interested and I'm sure she being a lady, would respect my interest in remaining acumen. Same thing for a letter, if she puts out a flier and I'm not interested in it, I can put it to one side or just put it in the trash can. So from the standpoint of communicating to me, when I don't want to be communicated with, I think the alternatives that have been discussed are probably not going to work as well, but that that's because I don't want them to work as well. If the question relates to communicating with people in a situation in which they are either, you know, because the nature of the circumstance is such that they can be stimulated or want to be stimulated, I think there are probably dozens of alternative ways to communicate this point of view. You know, leaflets, fliers, carry a poster around Ladue, Schnucks, which is a half mile away or the St. Louis County Court House, which is a mile away and I am sure, that she would come into contact with more people in that context, than simply putting up a sign in her yard.

Q Do you believe that those methods would be more or less intrusive on your own rights to privacy?

[95] A The,—I hope you're just asking for my personal belief,—

Q Yes.

A —because I haven't gone and done legal research on this.

Q No, I'm not asking your,—

A I don't want to try and tell the Court what the law is, at least without more preparation than from a legal perspective that I've done today. In terms of what I have, which is the ability to sit at home and think about things that I want to think about and not think about things that I don't want to think about, yes, things that happen outside my neighborhood, are not going to be a problem for me.

Q Okay. Do you have any concerns about the safety of your neighborhood, based upon the sign that Ms. Gilleo would like to place in her yard?

A I do sir and it's from a different perspective than any that I've heard this afternoon. It was mentioned that this is a, it is a private street and there is one, supposedly, one entrance into the subdivision off of Ladue Road. My driveway and my next door neighbor's driveway, which we share however, run, they provide a different exit from the street. The driveway runs from Willow Hill Road, down in the back of the house, to McKnight Road, so that it is possible for a vehicle to go from Willow Hill out to McKnight and then out [96] back to Ladue Road, by means of going down our driveway, without having to go through what is supposedly, the only entrance to the subdivision. And I am concerned that when you are dealing with controversial, political topics, that it is not unusual to have people who disagree with that political sentiment, coming along to do something about it. I heard some testimony today, that the sign had been taken and then there was another occasion on which it had been thrown on the ground and the police had been called. My concern is that if the police are called and stop up the so called bottleneck, some vandal, who is interested first, in defacing the sign, because it is controversial and then in making his escape, is going to drive his car down my driveway. I have a twenty-one month old son, who likes to play on that driveway, I'm concerned for his safety. I have, for that matter, a three year old golden retriever, who is a very stupid dog and doesn't have enough sense to get out of the way of a car and I'm concerned about him too.

Q Thank you.

A My apologies to the dog.

(Laughter)



Q Are you concerned at all, about the esthetics of your neighborhood, as they would be affected by exhibit 1, the sign?

A I have a concern about it yes. I would not want, I [97] wouldn't want to suggest I'm an expert in esthetics, I'm sure my wife would have something to say about that if I did, but it isn't what I moved out there for. Billboards or signs, I mean, it's a very nice, well done sign, I certainly don't quarrel with that, but I mean, I like the trees and the grass and the shrubbery and that's one of the things that I moved into the neighborhood for.

\* \* \* \*

Q Mr. Arnold, do I understand that your basic law practice involves litigation and appellate practice?

A That's correct sir.

Q What type of litigation? Is it business or accidents or what?

A It pretty much covers the waterfront, at this time, I would say it is primarily a commercial litigation practice, by which I would mean, you know, securities law, RICO, breach of contract, corporate internesis (phonetic), corporate disputes, that sort of thing.

Q I see. So you're involved in controversy from early in the morning, until late in the afternoon, several days a week [98] at least and sometimes you're in the court?

A That's a fair statement sir.

Q Okay. You of course, as you testified today, are not speaking for any other residents of Ladue, just for yourself, aren't you?

A That's entirely correct.

Q Okay. And I think you said, that when you go home to your wife and your child and your dog, you really would like to avoid further controversy and debate, is that correct?

A That is generally correct, except at such times as I or my wife chose to initiate a discussion like, you know, who are you going to vote for in Tuesday election.

Q Uh-huh. Do you from time to time, discuss the Gulf problem, the Iraq problem, as to whether the United States will go to war there or whether peaceful means will be used and so forth?

A Yes sir.

Q I'm sorry.

A Yes sir.

Q Okay. And were any of those discussions initiated by looking out of the window and seeing this sign or were they independent of the sign?

A The,—it's kind of a hard question to answer. Some were initiated just by, you know, one of us happened to make a remark. Some of them, I have to tell you candidly, were [99] stimulated by this sign and by the newspaper publicity that has been attended upon it and these proceedings.

Q I see. And you'll agree, won't you, that the Iraqi conflict is a very important issue which people should discuss and consider, shouldn't they?

A I agree it is an important issue and I agree that concerned citizens will at some point in time, want to give some attention to it. If the import of the question is that they should be forced to do so, at times and places not of their own choosing, then I would disagree with it.

Q I see. Well this sign didn't force you to discuss that issue, did it?

A In and of itself, I mean, the sign didn't stand up and say "Talk to me", of course not.

Q Right.

A What the sign does, when you walk past it or these day, more likely drive past it, it forces the existence of that controversy into the forefront of your mind.

\* \* \* \*

## TESTIMONY OF SALLY HERMAN GULICK

[104]

SALLY HERMAN GULICK,  
DEFENDANT'S WITNESS, SWORN

## DIRECT EXAMINATION

BY MR. SUMMERVILLE:

Q Would you state your name for the record please?

A Sally Herman Gulick.

Q Do you go by the nickname Holly?

A Yes I do.

Q Okay. Ms. Gulick, where do you reside?

A #30 Willow Hill Road.

\* \* \* \*

[105] Q Let me show you ma'am, what's been marked as Defendant's Exhibit B, which is a certified copy of the Subdivision Indenture, as it appears in the records of the St. Louis County Recorder of Deeds and I'll ask you if you've seen that document?

A Yes.

Q Are you familiar with that document?

A I am.

Q Is that in fact, the indenture, which governs your subdivision, with private deed restrictions and covenants?

A Yes it is.

MR. SUMMERVILLE: Your Honor, we'd offer exhibit B, into evidence at this time.

THE COURT: Any objections?

MR. MARGO: No objections.

THE COURT: Exhibit B, is admitted.

MR. SUMMERVILLE: Thank you.

[106] BY MR. SUMMERVILLE:

Q Does exhibit B, set forth certain specific restrictions upon the use of private property in the Willow Hill Subdivision by the residents and owners of the property?

A Yes.

Q And does it give the trustees of the subdivision, with a proper majority of the owners of the lots, under the terms of the Indenture, the right to enact additional rules and regulations under the Indenture?

A Yes it does.

\* \* \* \*

[109] Q Ms. Gulick, you were asked about being a trustee of 114 Willow Hill and the Indenture, which I believe you still have in front of you?

[110] A Yes.

Q Would you agree, that the Indenture does not address political signs in any manner?

A That is true.

Q Now you just testified a few minutes ago, that if Ms. Gilleo approached you in several manners, you would be happy to discuss the Persian Gulf situation with her, is that correct.

A Yes.

Q You saw the sign up in her yard, didn't you?

A Uh-huh.

Q Did you ever go over and discuss the Persian Gulf with her?

A No, I never did.

Q Okay. Now I believe you testified that you don't want any signs in your neighborhood, isn't that correct? No matter what they say?

A That's correct.

Q Okay. But you didn't mind having a Santa Clause sign, in your neighborhood, at #5 Willow Hill, did you?

A In the last forty-eight hours, I have been doing a lot of thinking,—

Q Oh, so you've changed your mind since Monday now?

A I've changed my mind. I don't want "Beware Of The Dog", I don't want "Vote on Tuesday", I don't really care to have [111] any signs, including the Santa Claus.

Q Okay. So let me ask you, when I asked you on Monday, the question was, "So I am correct, that you're

willing to put up with an ugly For Sale sign, but not an ugly sign that states somebody's opinion?" You agree with me, you said "Correct" on Monday, but do you still agree with that?

A I think a For Sale and a For Rent sign, is a necessary evil, you are trying to sale [sic] your house.

Q So if you're trying to sale [sic] your house, it's okay to have a sign? If you're not trying to sale [sic] your house, it's not okay to have any sign at all now?

A I would say yes.

Q Okay. And am I correct, that although on Monday, you felt that a Santa Claus sign on the front of #5 Willow Hill was fine, today, you don't think it's fine?

A That's correct, because how you distinguish, that is a sign, so is "Beware Of The Dog", "No Trespassers Allowed", those are all signs and I don't care for them.

\* \* \* \*

#### TESTIMONY OF CALVIN FRANK DIERBERG

[114]

CALVIN FRANK DIERBERG,  
DEFENDANT'S WITNESS, SWORN

#### DIRECT EXAMINATION

BY MR. SUMMERVILLE:

Q Would you state your name for the record sir?  
[115] A Calvin Frank Dierberg.

Q Mr. Dierberg, are you the Chief of Police, in the City of Ladue?

A Yes I am.

Q How long have you had that position?

A About two years.

Q And what was your position with the City, immediately before that?

A I was a Lieutenant.

Q And how long had you been with the City of Ladue police force, continuously?

A Since 1955.

Q Alright. So you have been associated with the Police Department of the City of Ladue, since, continuously, since 1955?

A Yes sir.

Q Okay. Mr. Dierberg, as part of your responsibilities as the Chief of Police, are you responsible for the enforcement of the Sign Ordinance, of the City of Ladue, which is an issue in this case?

A I am.

Q And did you have responsibilities as a Police Officer, with respect to enforcement of that Sign Ordinance?

A I did.

Q Okay. During the thirty-five years that you have been [116] on the City Council, excuse me, Chief of Police of the City of Ladue, during that period of time that the Sign Ordinance in question, has been in effect, do you know of anytime when political signs of any kind, were permitted within the City of Ladue?

A I do not.

Q Okay. Have you personally been involved in removing political signs, when they appeared in the City of Ladue, —

A Yes I, —

Q —during your tenure?

A Yes I have.

Q Okay. And have you been involved in the removal of placards or signs of any kind, in residential neighborhoods, even though not of a political nature, in connection with your police responsibilities?

A If we've been directed so, yes.

Q Okay.

A It could be legal real estate signs, perhaps two, to a lot or a yard. It could be political signs.

Q Okay. Are you aware of anytime since you have been a police officer, enforcing the Ladue Sign Ordinance, where the Ladue Police have discriminated in anyway, in the enforcement of the Sign Ordinance, with respect to



political signs, on the basis of a content of the sign, the point of view expressed by the sign?

[117] A I have never known that to happen, —

Q Alright.

A —where the officer's made a decision of that nature. All such signs are removed.

Q Okay. (Pause) Let me show you Officer Dierberg or Chief Dierberg, excuse me, what's been marked as Exhibit E and I'll show you at the same time, what's been marked as Exhibit F. Can you explain to us please, what Exhibit E, is?

A E, is a dispatch, in which the sign classification refers to sign violation or ordinance violations, correction, sign violations, it's specific as to signs.

Q Okay. Is that a computer printout sir?

A Yes it is.

Q And is that kept in the ordinary course of the business of the Police Department?

A Yes it is.

Q Can you explain what period of time is reflected in Exhibit E?

A This one is from January 1, 1988 through 12/26/90.

Q So it's through today?

A Yes.

Q Alright. Now can you explain very briefly, what kind of information is contained in that document?

A This particular one is a sign violation, which is initiated by the Communications Officer. She gets the call, [118] she makes an entry into the computer as to a sign violation, a brief synopsis of what the violation is supposed to be, what time she dispatches, what time the officer arrives, what the officer's name is and if a report will be generated.

Q And does include any information about what the officer finds when he reached the scene and what he radios back to the dispatcher?

A It does at times, indicate that the situation was corrected.

Q Okay. Now does that document contain all of the police dispatches that relate specifically to the Sign Ordinance violations?

A Yes it does.

Q Alright. And are those entries made at or about the time of the occurrences that are reflected? That is, when the dispatch is made and when the information is obtained?

\* \* \* \*

[121] Q I'd like to ask you sir, based upon your thirty-five years of experience with the Ladue Police Department and your experience in enforcing the traffic laws and your experience in enforcing the ordinances and investigating accidents in the City of Ladue, whether you, as Chief Of Police, have any concern about the safety aspects of yard signs on private residences in the City of Ladue?

A I do.

Q And what are those safety concerns that you have?

A A motorist passing through that area or any subdivision, may glance off and see that sign and may tend to look at the sign longer than safety would permit and he could hit or loose control of his car and strike an object or a person or whatever. I would have that concern.

\* \* \* \*

[122] Q Chief, are you generally familiar with the Sign Ordinance and the sub-parts that we've been discussing today and during your deposition?

A Yes.

Q Okay. Would the ordinance prohibiting private signs on residential property, apply with equal force, to a sign in somebody's back yard?

A Yes it would.

Q So that if somebody placed a small sign in their back yard, near a cluster of let's say, poison ivy or poison oak and it said, "Watch Out For Poison Oak, Do Not Enter," that [123] would technically be in violation of the Ladue Ordinance, wouldn't it?

A Perhaps not, it may be a danger and serving notice of a danger, it might be one of the exceptions.

Q I see. And even though it's on private property, there is an exception?

A Perhaps.

Q I'll ask you if you will take a look if you will, at Section 35-2, of the Ladue Code, which is Exhibit 2, here and if you'll pardon me for reaching, I'll hand it to you and ask you if you will tell me where the exception to that poison ivy sign, that I mentioned, appears in Section 35-2, of Exhibit 2?

A Paragraph B, is what I was referring to. "subdivision identification signs of a permit character and road signs, for danger, direction or identification." Apparently I'm in err.

Q I see, you would consider the kind of sign I just described, to be a road sign?

A No.

Q Maybe I misunderstood, I'm sorry.

A I'm in err.

Q Oh, I'm sorry, I misunderstood.

A I'm in err.

Q Yes, now I know.

[124] A However, I think the letter of the ordinance may, under your Health Inspection Notices, may constitute notice of a hazard and I think that a reasonable person would believe that it would be permitted.

Q I see. Even though it technically then, isn't permitted by the ordinance, you see some flexibility by reasonable people, don't you?

A In that specific example, yes.

Q Okay. Let me give you another example. Again, somebody's large back yard, they're about to have a group of people over there and they have different punch bowls for drinks and one says "Alcoholic" and the other large sign, so non-drinkers will know it, says "Non-Alcoholic" and that's in someone's back yard. In violation or not in violation?

A Technically, it might be in violation.

Q Okay. Another party in someone's back yard and this time we have a merry-go-round and little types of things like that for children and there's a sign that says merry-go-round. Violation or non-violation?

A Technically, it is a violation.

Q I see. Do you see the same flexibility that might exist with respect to a merry-go-round sign, that you saw with respect to a poison ivy sign, that I've described?

A I would think they're comparable yes, the danger.

Q And would you anticipate that that homeowner in Ladue, [125] who wants to put up a merry-go-round sign or one of the others that I'm talking about, would go to the City Council and apply for a permit?

A He may.

Q Well, what would you anticipate, under those circumstances?

A I've never been faced with that question, I don't know.

Q Okay. Well, let me ask you, as Chief of Police, whose familiar with the ordinances and the safety of the people, if you were faced with that, one of those situations, how would you react?

A I think that would be like a sign over a pond that says, "Beware Of Thin Ice."

Q Okay. Would that type of a sign be permissible in someone's back yard, in your judgment?

A I think it would over-ride the safety measure.

Q Okay. Would that require the approval of the Ladue Council or not?

A Technically, it probably would.

Q Okay. And do you know of any section of the Ladue Ordinances, referred to as Exhibit 2, in this hearing, that permit that type of application?

A Not that I'm aware.

Q Alright. Have you, since your deposition or even before, have you made any effort to look at the sign, Exhibit 1, [126] to determine how long it would take

you to look at it, read it and then take your eyes away from it?

A No I haven't.

Q Okay. So when you testified that it would take somebody longer to look at Exhibit 1, as compared to looking at a road sign, that, or a stop sign, you're really guessing aren't you, on the relative difference of time it takes to look at such a sign, such signs?

A I don't think so. An average motorist, he sees the same type of traffic signs every time he drives out on the street. This particular sign he doesn't see that often and I think he would tend to read it as he's driving.

Q Okay. Would that also be true if the sign were up for two or three weeks and the same residents in the subdivision drove by it, back and forth, more than once? Wouldn't you agree; and I don't mean to ask you two questions at once, so I'll limit it to this question, wouldn't you agree, that after they see it the first or second time, that it would take considerably less time to look at it and understand it, the third or fourth time?

A I would think so.

Q Okay. So your real concern in this so-called "timing issue," is the first time or the second time that somebody sees the sign, is that correct?

A Yes.

[127] Q Is it the controversial nature of the sign, that would take somebody a little bit longer to look at it, than a road sign or is it the newness of the sign?

A It's probably both.

Q Alright.

A It's a new sign, it's normally not there, people want to see what it says.

Q Ladue has numerous ordinances to cover peace disturbance, trespass, thievery, maintaining the order, maintaining order, peace and order, don't they?

A Yes.

Q Okay. And you really don't have a serious problem in maintaining peace and order, in the City of Ladue,

if the plaintiff is permitted to put up this one sign, do you?

A This particular sign, it has generated apparently, some anonymous phone calls, of threatening and a harassing nature.

Q Uh-huh.

A Perhaps those calls would not have been received if the sign had not been and that's a guess.

Q Alright. Chief, does Ladue have an ordinance against harassing or anonymous phone calls to people?

A Yes it does.

Q Okay. When these anonymous phone calls that you refer to, were reported to you, tell me what steps the Police Department took to look into them and investigate them?

[128] A In anonymous or threatening phone calls, it's up to the telephone company to install a trap, which they call a Trap, on the line, to determine where the calls are coming from.

Q I see.

A The Police Department cannot request this from the telephone company, without a court order, so it's up to the individual phone owner, to make that request. Aside from that, Ms. Gilleo and I, discussed perhaps, if she left the home and while she was gone, to call us or before she left and we would keep an extra watch on her house.

Q I see. You did not consider it serious enough to seek a court order, did you?

A No.

Q Okay. And you didn't consider it serious enough to place extra patrolmen at her home, unless she called you and asked you to do so, isn't that correct?

A That's correct.

Q And you of course, have no opposition to heated, controversial debate, between citizens in Ladue, do you?

A Not as long as it's legal.

Q And peaceful?

\* \* \* \*



[133] Q For example, let me refer you to Exhibit E, at about the time of the election of this year, November 4, 1990 and November 5, 1990, November 6, 1990 and ask you whether those refer to the responses by the Police Department, to notifications of political signs in private yards?

A (No verbal response).

Q November 4, November 5 and November 6.

A Yes.

Q Okay. And to the best of your knowledge, were those signs removed, either by police or by the property owners on consultation of the police?

A Yes.

Q Take a look, if you would please, at the notation for 11/26/1990, can you tell me what kind of sign was involved in that notification?

A This was located at Ellsworth and McKnight Road. A resident complained of a sign advertising Winter Wonderland, being in view obstruction and the officer contacted the Park Ranger, who stated the sign would be moved, so there would be no obstruction.

\* \* \* \*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

\_\_\_\_\_  
[Caption Omitted in Printing]  
\_\_\_\_\_

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND PERMANENT INJUNCTION**

Pursuant to Rule 56, Federal Rules of Civil Procedure, Plaintiff, Margaret P. Gilleo, through her attorneys, Green, Hoffman & Dankenbring, moves that this Court grant her summary judgment and enter a permanent injunction against enforcement of new Ladue City Ordinance Chapter 35.

Summary judgment should be granted where there is no genuine issue as to any material fact, and Plaintiff is entitled to judgment as a matter of law. The only facts material to Plaintiff's claims are those set forth herein and described more fully in the accompanying memorandum, and there is no genuine issue of fact as to any of these material facts. In particular, it is beyond dispute that the new Ladue ordinance does not differ in any relevant respect from the old ordinance previously held unconstitutional on its face by the Court. Consequently, as a matter of law, Plaintiff is entitled to summary judgment and issuance of the requested injunction.

In support of her motion, and as more fully described in the accompanying memorandum, Plaintiff states:

1. This action was brought by Plaintiff to enjoin enforcement of Chapter 35 of the Ladue City Ordinances. This ordinance purports to bar Plaintiff from placing in the front window of her home or in her front yard a

sign stating "FOR PEACE IN THE GULF." Plaintiff has challenged the ordinance on grounds that it infringes her Constitutional right to freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution.

2. Previously, the Court has found that Ladue's first ordinance, which purportedly banned political speech through signs (hereinafter "Old Chapter 35"), was unconstitutional on its face. The Court held that Old Chapter 35 impermissibly favored commercial speech over non-commercial speech and some forms of non-commercial speech over others. The Court entered a preliminary injunction barring enforcement of Old Chapter 35.

3. Following the Court's decision, Ladue repealed Old Chapter 35 and enacted a new ordinance (hereinafter "New Chapter 35") in its place. New Chapter 35 is, in all relevant aspects, substantially identical to Old Chapter 35: New Chapter 35, like its predecessor, purports to permit the posting of some signs, but not others, favoring commercial signs over those carrying non-commercial messages, and some forms of non-commercial signs over others. The differences between Old and New Chapter 35 do not affect the facial unconstitutionality of the ordinance.

4. New Chapter 35 purports to bar Plaintiff from placing in her window a sign stating "FOR PEACE IN THE GULF." Absent the entry of summary judgment or a permanent injunction, Plaintiff is again threatened with abridgment of her First Amendment rights. If New Chapter 35 is enforced against Plaintiff, she will suffer irreparable harm which will result in damages difficult, if not impossible, to measure.

WHEREFORE, Plaintiff moves that this Court grant her summary judgment; enter its Order prohibiting the City, its agents and representatives, from enforcing Ladue City Ordinance Chapter 35, Articles I and II; declare

such ordinance a violation of the First and Fourteenth Amendments to the Constitution; and award Plaintiff her costs and expenses of litigation, including reasonable attorneys' fees, and whatever other relief the Court deems just under the circumstances.

Respectfully submitted,

GREEN, HOFFMAN &  
DANKENBRING  
For the American Civil  
Liberties Union of Eastern  
Missouri

By: /s/ Mitchell A. Margo  
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[Certificate of Service Omitted in Printing]

## Chapter 35

## SIGNS

## [CITY OF LADUE'S EXISTING SIGN ORDINANCE]

Art. I. Declaration of Findings, Policies, Interests, and Purposes

Art. II. In General, § 35-1—§ 35-24

ARTICLE I. DECARATION OF FINDINGS,  
POLICIES, INTERESTS,  
AND PURPOSES

WHEREAS the City of Ladue, formed in 1936, has a unique heritage and was created as a specially planned community based upon the work of the renowned city planner, Harland Bartholomew;

WHEREAS the City of Ladue is predominantly a residential community, small portions of which have been zoned for commercial and industrial use;

WHEREAS the City of Ladue consists of 5,456 acres or 8.566 square miles, of which a total of approximately 84% or 5,283 acres is in residential use (including 700 acres of public and private roads), approximately 13.9% or 721 acres is in public or semi-public use such as schools, public parks, and religious institutions, approximately 1% or 51 acres is in commercial use, and approximately 2% or 102 acres is in industrial use;

WHEREAS the protection and preservation of the rights and values of privacy, aesthetics, and safety are of great importance to the residents of the City of Ladue and substantially contribute to the special ambience, quality of life, and general welfare of the community;

WHEREAS the private, residential, commercial, industrial, and public areas of the City of Ladue should be

maintained in a manner to foster the values of privacy, aesthetics, and safety; and

WHEREAS the property values in the City of Ladue and the general welfare of its residents are enhanced by the maintenance of the highest standards of privacy, aesthetics, and safety for the benefit of all its residents;

IT IS HEREBY DECLARED that the erection and placement of signs should be carefully regulated so that the signs do not substantially impinge upon the privacy, aesthetic, and safety interests of the community;

IT IS HEREBY DECLARED that the proliferation of an unlimited number of signs in private, residential, commercial, industrial, and public areas of the City of Ladue would create ugliness, visual blight and clutter, tarnish the natural beauty of the landscape as well as the residential and commercial architecture, impair property values, substantially impinge upon the privacy and special ambience of the community, and may cause safety and traffic hazards to motorists, pedestrians, and children;

IT IS HEREBY DECLARED that the City of Ladue wishes to allow speech and expression through the medium of signs so long as the City of Ladue is protected against the proliferation of an unlimited number of signs that substantially impinge upon the City of Ladue's interests in privacy, aesthetics, and safety;

IT IS HEREBY DECLARED that the time, place, and manner of the regulation of signs described in this chapter are necessary to protect and preserve the City of Ladue's interests in privacy, aesthetics, safety, and property values;

IT IS HEREBY DECLARED that the residents of the City of Ladue have numerous alternative and effective ways of expressing themselves other than through the medium of signs;



IT IS HEREBY DECLARED that the City of Ladue takes notice of R.S.Mo. § 67.317 (1986), which requires political subdivisions of Missouri to allow "for sale" and "for lease" signs;

IT IS HEREBY DECLARED that there is a limited number of "for sale" and "for lease" signs in the City of Ladue at any given time;

IT IS HEREBY DECLARED that there is a limited number of commercial establishments in the commercial areas of the City of Ladue at any given time;

IT IS HEREBY DECLARED that there is a limited number of municipal signs, subdivision identification signs of a permanent character, road signs and driveway signs for danger, direction, or identification, health inspection signs, signs for churches, religious institutions, and schools, signs identifying public transportation stops, and signs identifying safety hazards in the City of Ladue at any given time;

IT IS HEREBY DECLARED that residence identification signs (i) assist emergency and safety personnel in providing fire, police, ambulance, and other emergency services to the public; and (ii) are small in size and are placed frequently on existing structures such as the mailbox or front wall of the principal structure. Therefore, residence identification signs contribute materially to the public safety and welfare and do not substantially impinge upon the City of Ladue's interest in privacy, aesthetics, and maintenance of property values so as to necessitate a total ban on said signs;

IT IS HEREBY DECLARED that road signs and driveway signs for danger, direction, or identification and signs identifying safety hazards contribute materially to the public safety and welfare and do not substantially impinge upon the City of Ladue's interest in privacy,

aesthetics, and maintenance of property values so as to necessitate a total ban on said signs;

IT IS HEREBY DECLARED that the allowance of all commercial and non-commercial signs in the residential, commercial, and industrial areas of the City of Ladue, other than those specifically permitted by this chapter, would permit the proliferation of signs in a manner that would substantially impinge upon the privacy, aesthetic and, to some extent, the safety interests of the City of Ladue and impair property values because of the unlimited number of signs that thereby could be erected throughout the City of Ladue;

IT IS HEREBY DECLARED that the signs permitted in this chapter either contribute substantially to the public safety and welfare or, because of their limited number, location, and size, do not substantially impinge upon the City of Ladue's interest in privacy, aesthetics, safety, and maintenance of property values so as to necessitate a total ban of all signs; and

IT IS HEREBY DECLARED that the City of Ladue opposes discrimination based upon the content of any lawful speech or expression and that the provisions of this chapter are not intended and shall not be interpreted so as to permit any such discrimination.

## ARTICLE II. IN GENERAL

### Sec. 35-1. Definitions.

For the purpose of this chapter, the following terms and words shall have the meanings respectively ascribed to them:

*Area of signs.* The entire area within a single continuous perimeter enclosing the extreme limits of such sign, except "wall signs." Such perimeter shall not include any border or structural elements lying outside and not form-

ing an integral part of the display. The area of a wall sign shall be the height of the tallest letter or display item multiplied by the length of the sign.

*Erect* shall mean to build, construct, attach, hang, place, suspend, or affix, and shall also include the painting of wall signs.

*Ground signs* shall include any sign supported by upright or braces placed upon the ground, and not attached to any building.

*Marquee.* Marquee shall include any hood or awning of permanent construction projecting from the wall of a building above an entrance and extending over a thoroughfare.

*Office building.* A building in which any of the occupants use the space occupied therein primarily for purposes of offices.

*Person* shall mean and include any person, firm, partnership, association, corporation, company, institution, and organization of any kind.

*Sign.* A name, word, letter, writing, identification, description, or illustration which is erected, placed upon, affixed to, painted or represented upon a building or structure, or any part thereof, or in any manner upon a parcel of land or lot, and which publicizes an object, product, place, activity, opinion, person, institution, organization or place of business, or which is used to advertise or promote the interests of any person. The word "sign" shall also include "banners", "pennants", "insignia", "bulletin boards", "ground signs", "billboards", "poster billboards", "illuminated signs", "projecting signs", temporary signs, "marquees", "roof signs", "yard signs", "electric signs", "wall signs", and "window signs", wherever placed out of doors in view of the general public or wherever placed indoors as a window sign.

*Wall Signs.* Any sign erected, painted on or constructed into and as a part of the wall or exterior of a structure and not extending out from or above the wall or exterior of such structure, but forming an integral part of the surface of such wall or exterior thereof provided that such sign may extend above the wall where there is a wall or roof structure behind all of such extension.

*Window signs.* Any sign erected, attached to the outside or inside of a window, or placed immediately inside of a window for public display purposes to persons on the outside of such building or structure. (Ord. No. 812, § 2, 1-21-63; Ord. No. 929, § 1, 10-16-67; Ord. No. 1387, § 1, 2-10-86)

#### Sec. 35-2. Signs restricted within the City.

No sign shall be erected, constructed, painted placed, enlarged, maintained, changed or relocated except in conformity with the provisions of this chapter.

#### Sec. 35-3. Removal of nonconforming signs.

Any sign which is not erected, constructed, or maintained in accordance with the provisions of this chapter may be removed by the City and the cost thereof charged to the owner of, or person maintaining, such sign. (Ord. No. 812, § 15, 1-21-63)

#### Sec. 35-4. Limited number and size of signs permitted.

Subject to the applicable regulations hereinafter described, the following types of signs are permitted in the City of Ladue:

- a) Municipal signs but said signs shall not be greater than nine (9) square feet.
- b) Subdivision and residence identification signs of permanent character but said subdivision identi-



fication signs shall not be greater than six (6) square feet and said residence identification signs shall not be greater than one (1) square foot.

- c) Road signs and driveway signs for danger, direction, or identification but said signs shall not be greater than twelve (12) square feet.
- d) Health inspection signs but said signs shall not be greater than two (2) square feet.
- e) Signs for churches, religious institutions, and schools subject to the restrictions described in Sec. 35-5.
- f) Identification signs for not-for-profit organizations not otherwise described herein but said signs shall not be greater than sixteen (16) square feet.
- g) Signs identifying the location of public transportation stops but said signs shall not be greater than three (3) square feet.
- h) Ground signs advertising the sale or rental of real property subject to the restrictions described in Sec. 35-10.
- i) Commercial signs in commercially zoned or industrial zoned districts subject to the restrictions as to size, location, and time of placement hereinafter described.
- j) Signs identifying safety hazards but said signs shall not be greater than twelve (12) square feet.

**Sec. 35-5. Signs for churches, religious institutions, and schools.**

Any church, religious institution, or school located in the city shall be permitted to erect one (1) identification sign and one (1) wall bulletin or one (1) ground sign, none of which shall be more than sixteen (16) square feet in area, when located on the premises occupied by

such church, religious institution, or school. Such sign shall be limited to announcements relating to the name of such church, religious institution, or school, its services, activities or other functions, and shall be located so that it does not interfere with a motor vehicle driver's view of the public roads or of the driveway leading into or out of such church, religious institution, or school premises.

In addition, a church, religious institution, or school may erect a temporary sign during a continuous period of not more than sixty (60) days, subject to the same limitations as to area and announcements. (Ord. No. 812, § 8, 1-21-63)

**Sec. 35-6. Signs at filling stations.**

In lieu of the signs authorized by other sections of this chapter, gasoline filling stations may erect one banjo type ground sign having an area of not more than twenty-five (25) square feet on each side (except where located on Lindbergh Boulevard, in which event such area shall not exceed sixty (60) square feet on each side) placed no closer to a street than the nearest edge of the road right-of-way, and having a ground clearance not less than twelve (12) feet at the bottom edge thereof, nor more than twenty-two (22) feet at the top edge thereof.

In addition, such filling stations may erect two (2) free standing signs of not more than twelve (12) square feet each, whose height aboveground at the top edge thereof shall not exceed four (4) feet; and three (3) building or window signs each having maximum dimensions of not more than two (2) feet in height, with a length not to exceed six (6) feet, and having a combined total area for the three (3) signs of not more than sixty (60) square feet; provided that where such filling station is located on a corner lot it may have four (4) such building or window signs. (Ord. No. 812, § 4, 1-21-63; Ord. No. 1197, § 1, 4-17-78)



Sec. 35-7. Signs for buildings other than filling stations, churches, religious institutions, and schools.

a) A building, other than gasoline filling station, church, religious institution, or school which is located on less than three (3) acres of ground and is occupied by a single separately owned and operated commercial or industrial establishment may have one sign attached to such building. Such sign shall be limited to twelve (12) square feet and shall not extend above the wall height of such building unless located on top of the building. In lieu of such sign, if the building is set back further than the front setback line for structures in the applicable zoning district, a free standing sign having an area of not more than fifty (50) square feet or one (1) percent of the ground floor area of such building, whichever is smaller, but not less than ten (10) square feet, may be erected on such building line.

b) A building located on three (3) acres or more of ground, which is occupied as set forth on paragraph a) of this section, and which covers not more than forty (40) per cent of the area of the tract of ground upon which it is located, may have a sign as provided in said paragraph a) with an area of not more than two hundred sixty (260) square feet; and where such sign is placed on a building located on Lindbergh Boulevard there is permitted in addition thereto a free standing sign having an area of not more than one hundred twenty-five (125) square feet, located anywhere within the property lines of the premises.

c) In addition to the signs permitted by paragraphs a) and b) of this section, such establishments may have one (1) window sign with an area of two (2) square feet for each ten (10) linear feet of window frontage on the street where displayed, but may have two (2) such signs in any event.

d) When such building is located on a lot bordered by two (2) or more streets, or at the intersection of a street and an area used by the public for vehicular traffic, the signs permitted by paragraphs a), b), and c) of this section shall be permitted on two (2) of such travelled areas. (Ord. No. 812, § 6, 1-21-63; Ord. No. 1197, § 1, 4-17-78)

Sec. 35-8. Signs for office buildings.

A building which is occupied to any extent as an office building or to any extent as an arcade building with business establishments not fronting on a public street may have the following signs; to wit:

- a) Each commercial and industrial establishment occupying any portion of the ground floor of such building and facing a public street may have the signs permitted by Sec. 35-9.
- b) The occupants using a portion of the building for offices and those occupants having business establishments not fronting on a public street may have one (1) sign for all such occupants giving only the name and address of the building, and the name and one business of each of such occupants. The area of such sign shall not exceed sixteen (16) square feet, and it shall be located on the wall of such building adjacent to the entrance thereto, or it may be a ground sign similarly limited as to area and content, located adjacent to or near the front property line of the premises. (Ord. No. 812, § 5, 1-21-63; Ord. No. 929, § 1, 10-16-67)

Sec. 35-9. Signs for buildings other than office or arcade.

a) A building other than an office or arcade building which is occupied by more than one industrial or commercial establishment, may have one (1) sign attached to such building for each such occupant facing a public

street. All such signs shall be limited to twelve (12) square feet and shall not exceed above the wall height of the building except when located on top of the building; and no sign shall extend out over either end of the building.

b) In addition to the sign permitted by paragraph a) of this section each of said separate business establishments may have the window signs that are authorized by paragraph c) of Sec. 35-7.

c) When the portion of the building occupied by such establishment is located on a corner of two (2) intersecting streets, or at the intersection of a street and an area used by the public for vehicular traffic, the signs permitted by paragraphs a) and b) of this section shall be permitted on each of such intersecting traveled areas. (Ord. No. 812, § 7, 1-21-63; Ord. No. 1197, § 1, 4-17-78)

#### Sec. 35-10. For sale and for lease signs.

It shall be permissible for the owner or authorized agent of an owner with an interest in real property to erect a single ground sign advertising the sale or rental of the real property upon which it is maintained; but such sign shall not be attached to any tree, fence or utility pole, and shall be not greater than six (6) square feet. Such sign may only state: (a) that the property is for sale, lease or exchange by the owner or his agent; (b) the owner's or agent's names; and (c) the owner's or agent's address or telephone number.

#### Sec. 35-11. Illuminated, moving, flashing, or animated signs.

No one shall install or maintain more than one illuminated sign among the signs permitted by this chapter, and no sign shall be illuminated otherwise than by electricity. All illuminated signs shall be constructed entirely of metal or other incombustible materials, except the insulation thereof, including the uprights, supports and

braces for the same, and if on a building shall be properly and firmly attached to the building and constructed so as not be or become dangerous. The illumination provided shall be limited to the minimum amount necessary to allow the text of the sign to be read. Such sign shall be illuminated only during the business hours of the sign user.

It shall be unlawful to install, construct, place, display, or continue to maintain any sign which is moving, flashing, or animated.

#### Sec. 35-12. Roof signs.

Every roof sign shall be constructed entirely of steel construction, including the upright supports and braces of the same, and must be so constructed as to withstand a wind pressure of not less than thirty (30) pounds to the square foot of area subject to such pressure. When a roof sign is erected on a building which is not constructed entirely of fireproof materials, the bearing plates of said sign shall bear directly upon the masonry, walls, or upon the steel girders which are supported on the masonry walls and intermediate columns of such building. All roof signs shall be thoroughly secured to the building upon which they are installed by iron or metal anchors, bolts, supports, chains, stranded cables, steel rods, or braces. (Ord. No. 812, § 11, 1-21-63)

#### Sec. 35-13. Free standing, ground signs.

No free standing or ground sign (other than banjo signs of gasoline filling stations) shall be at any point more than fifteen (15) feet above the ground level, and every such sign shall have an open space of not less than two (2) feet between the lower edge of such sign and the ground level. All ground signs shall be designated and constructed so as to be safe from falling and to withstand wind pressures of not less than thirty (30) pounds to the square foot of area subject to such pressure. (Ord. No. 812, § 12, 1-21-63)



#### Sec. 35-14. Permit Required.

No sign permitted under Sections 35-6, 35-7, 35-8, 35-9, 35-11 and 35-12 shall be erected, constructed, painted or placed upon any building or premises within the City until a permit therefor has been issued by the City Clerk. (Ord. No. 812, § 13, 1-21-63)

#### Sec. 35-15. Application.

No sign permit shall be issued until after an application therefor has been filed with the City Clerk accompanied by duplicate scale or dimensional drawings showing the plans and specifications, dimensions, the material of which said sign is to be constructed, the details of construction thereof, including loads, stresses, and anchorage, the estimated cost thereof, and in the case of ground signs the proposed location with reference to street lines and the walls of adjacent buildings, if any. When a proposed sign is to be attached to a building or other independent structure, the drawings shall show the position of the sign on the supporting structure, the method of attachment to such structure and the character of the structural member to which such attachment is made. It shall be the duty of the Building Commissioner to review said plans and specifications and make written report to the City Clerk within fifteen (15) business days after filing of a permit application, as to compliance with the provisions of this Section.

All applications for permits to erect signs shall be filed by the owner of the premises, or shall be accompanied by written consent of such owner, the lessee, or agent of the property upon which said sign is to be erected. (Ord. No. 812, § 13, 1-21-63)

#### Sec. 35-16. Issuance.

Within thirty (30) days after the filing of a permit application that conforms to the provisions of Section 35-15, the City Clerk shall issue a permit upon determining that the provisions of this Chapter have been complied

with, including approval by the Building Commissioner of the plans and specifications in compliance herewith. An application for a permit shall be deemed granted if the Building Commissioner does not file his report and the City Clerk does not issue a written denial within thirty (30) days after the filing of such permit application.

#### Sec. 35-17. Appeal upon denial.

Any person who believes that he has been improperly denied a permit for a sign that conforms to the requirements of this Chapter may appeal to the City Council for a permit. Within sixty (60) days after the filing of an appeal, the City Council shall issue a permit upon determining that all the provisions of this Chapter have been complied with. A permit shall be deemed granted if the City Council does not issue a written denial within sixty (60) days after the filing of such appeal.

#### Sec. 35-18. Prevention of corrosion.

All signs which are not galvanized or constructed of approved corrosion-resistive, noncombustible materials shall be painted whenever necessary to prevent corrosion. (Ord. No. 812, § 14, 1-21-63)

#### Sec. 35-19. Maintenance of premises near sign.

It shall be the duty and responsibility of the owner of, or person maintaining, a sign to maintain the immediate premises occupied by the sign in a clean, sanitary and healthful condition. (Ord. No. 812, § 14, 1-21-63)

#### Sec. 35-20. Inspection of signs.

All signs may be inspected by the Building Commissioner or someone appointed by him to determine if the sign is insecure, in danger of falling, or otherwise unsafe.

#### Sec. 35-21. Notice to remove unsafe sign.

When any sign becomes insecure, in danger of falling, or otherwise unsafe, or if any sign exists or is installed or



maintained in violation of the provisions of this chapter with respect to construction or safety, the owner, person or firm maintaining such sign shall correct the deficiencies or violation or remove the sign within ten (10) days after receiving notice from the City Clerk; provided, however, that if such sign constitutes an immediate danger to the public health, safety or welfare, the Building Commissioner shall order immediate correction or removal of such sign. (Ord. No. 812, § 14, 1-21-63)

**Sec. 35-22. Limited variation of chapter provisions.**

The City Council may grant a limited variation from the strict application of the provisions and requirements of this chapter, but such variation may only be granted as to the size or location of a sign or the number of signs permitted on a person's property, and only if the Council determines that the variation in the particular circumstance is consistent with the policies, interests, and purposes stated in Article I of this ordinance. When considering a request for a variation, the Council shall not consider the content of any sign, and shall not depart from the strict requirements of this chapter in any respect other than those specifically permitted by this section.

**Sec. 35-23. Application of existing signs.**

The provisions of this chapter shall apply to the erection, alteration, reconstruction, construction, and maintenance of all signs within the city; however, all existing signs that have previously been allowed by ordinance or approved by permit shall be permitted.

**Sec. 35-24. Severability of parts of this chapter.**

The sections, paragraphs, clauses, and phrases of this chapter are severable and if any phrase, clause, sentence, paragraph, or section of this chapter shall be declared unconstitutional or otherwise unlawful by the valid judgment, decree, or injunction order of a court of competent jurisdiction, such ruling shall not affect any of the remain-

ing phrases, clauses, sentences, paragraphs, and sections of this chapter. In the event that, contrary to the policies, interests, and values of the City of Ladue, a court of competent jurisdiction issues a judgment, decree, or injunction order that this chapter is unconstitutional or otherwise unlawful because of any omission or prohibition in this chapter, then all provisions of this chapter not specifically declared to be unconstitutional or otherwise unlawful shall remain in full force and effect and all signs not already specifically regulated in Sections 35-4 to 35-23 shall be permitted but shall not be greater than six (6) square feet. In the event that a judgment, decree, or injunction order declaring all or a portion of this chapter to be unconstitutional or otherwise unlawful is reversed or vacated by a court of competent jurisdiction, the provisions contained in this chapter shall remain in full force and effect.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants, the City of Ladue, et al., and pursuant to Fed. R. Civ. P. 56, move the Court to grant summary judgment in favor of Defendants. As grounds for their motion, Defendants state as follows:

1. This case raises the important constitutional question of the City of Ladue's right to preserve its long-standing and significant interests in privacy, aesthetics, safety, and maintenance of property values by regulating signs and billboards.
2. Plaintiff has alleged in her amended complaint that Chapter 35 of the City Code of the City of Ladue (hereinafter "Ladue") is unconstitutional under the First and Fourteenth Amendments of the United States Constitution.
3. Plaintiff maintains a sign which is not permitted under Chapter 35 of the Ladue City Code.
4. Defendants have filed an amended counterclaim seeking a declaratory judgment affirming the constitutionality of Chapter 35 of the Ladue City Code, as amended on February 25, 1991 (hereinafter "new Chapter 35" or "the ordinance").
5. Defendants' amended counterclaim seeks a declaration of the facial constitutionality of new Chapter 35 based upon the First and Fourteenth Amendments of the United States Constitution; the amended counterclaim also seeks a declaration of the constitutionality of said chapter

as applied by Defendants to prohibit the maintenance of Plaintiff's sign.

6. A copy of new Chapter 35 is marked as Exhibit A, attached hereto, and incorporated by reference herein.

7. Defendants desire to enforce new Chapter 35 as it applies to Plaintiff and her sign and to use all lawful means to enforce Plaintiff's compliance with said ordinance.

8. In order to expedite the final submission of the merits of this case, Defendants have agreed not to enforce new Chapter 35 only as it affects noncommercial speech and only until the disposition of the anticipated cross-motions for summary judgment; however, Defendants assert that new Chapter 35 is constitutional both facially and as applied to Plaintiff and her sign.

9. In support of their motion for summary judgment, Defendants incorporate their amended counterclaim by reference herein and file the following affidavits and record items:

- A. Affidavit (including attached exhibits) of Malcolm C. Drummond, marked as Exhibit B, attached hereto, and incorporated by reference herein. (Due to their bulk, the exhibits to the Drummond affidavit are being filed separately.).
- B. Affidavit (including attached exhibits) of the Honorable Edith J. Spink, Mayor of the City of Ladue, marked as Exhibit C, attached hereto, and incorporated by reference herein. (Due to their bulk, the exhibits to the Spink affidavit are being filed separately.).
- C. Portions of Plaintiff Margaret P. Gilleo's testimony at a preliminary injunction hearing held on December 26, 1990, concerning the validity of a predecessor ordinance to new Chapter 35; the transcript of this testimony is marked as

Exhibit D, attached hereto, and incorporated by reference herein.

10. Based upon the pleadings (including all attached exhibits), new Chapter 35 of the Ladue City Code, marked as Exhibit A, the Drummond and Spink affidavits marked as Exhibits B and C (including all attached exhibits), and the portions of Plaintiff's prior testimony on December 26, 1990, marked as Exhibit D, there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law.

11. The City of Ladue's new Chapter 35 complies with the First and Fourteenth Amendments of the United States Constitution for reasons that include the following:

- A. New Chapter 35 contains reasonable time, place, and manner regulations of speech expressed through the medium of signs; these regulations "are justified without reference to the content of the regulated speech, . . . are narrowly tailored to serve a significant governmental interest, and . . . leave open ample, alternative channels for communication of the information." *Ward v. Rock Against Racism*, 109 S.Ct. 2746, 2753 (1983) (quoting *Clark v. Community For Creative Non-Violence*, 104 S.Ct. 3065, 3069 (1984));
- B. New Chapter 35 is content-neutral because Ladue's purpose and justification in passing the ordinance is not related to the content of speech.
- C. Ladue's purpose and justification in passing new Chapter 35 includes the following significant governmental interests: the furtherance of the City's long-standing interests and policies in preserving and protecting privacy, aesthetics, safety, and property values.
- D. Privacy, aesthetics, safety, and maintenance of property values are compelling and significant

governmental interests; Ladue has the constitutional right to protect and preserve these interests through new Chapter 35 even though the ordinance may have an incidental effect on speech expressed through the medium of signs.

- E. New Chapter 35 prevents the proliferation of an unlimited number of signs in the City of Ladue, which would offend the City's interest in privacy, aesthetics, safety, and maintenance of property values.
- F. The signs permitted under new Chapter 35 indicate that the ordinance is narrowly tailored to allow as much speech as possible through the medium of signs without substantially impinging upon Ladue's interest in privacy, aesthetics, safety, and maintenance of property values.
- G. New Chapter 35 is narrowly tailored to achieve its content-neutral objectives, and the ordinance "promotes . . . substantial governmental interests that would be achieved less effectively absent the regulation." *Ward*, 109 S.Ct. at 2758 (quoting *United States v. Albertini*, 105 S.Ct. 2897, 2906 (1985)).
- H. Plaintiff Margaret P. Gilleo has numerous, ample, effective, and alternative forms of expression that do not significantly impinge upon Ladue's strong interests in privacy, aesthetics, safety, and maintenance of property values. These interests include:
  - 1) Letters, handbills, or flyers mailed to the residents of Willow Hill subdivision or to a broader audience;
  - 2) Letters, handbills, or flyers personally delivered to the residences in the Willow Hill subdivision or to a broader audience;



- 3) Person to person and/or door-to-door solicitation of neighbors in Willow Hill subdivision (or a broader audience) to support Plaintiff's position;
- 4) Telephone calls to her Willow Hill neighbors or to a broader audience to solicit support for Plaintiff's views;
- 5) Paid advertisements in newspapers of local circulation in the Willow Hill subdivision in Ladue and/or over a broader area including but not limited to the St. Louis Post Dispatch and the St. Louis Suburban Journal;
- 6) Use of a bumper sticker bearing a similar legend on Plaintiff's automobile;
- 7) Speaking at neighborhood meetings;
- 8) Inviting neighbors to tea or coffee or cocktails in Plaintiff's own home to discuss the issue of concern to her and to seek to persuade others to adopt her view;
- 9) Writing letters to the editor for newspapers and other periodicals in circulation in the City of Ladue and metropolitan St. Louis including, but not limited to, the St. Louis Post Dispatch and the St. Louis Suburban Journal;
- 10) Calling into radio talk shows in suburban St. Louis;
- 11) Making use of "public forum" commentary opportunities provided by television stations in the metropolitan St. Louis area; and
- 12) Arrangement for use of numerous public premises of county, city and school district or library district or of private premises of

schools and churches, located in Ladue, for a public meeting.

12. Defendants file contemporaneously herewith and incorporate by reference herein Suggestions in Support of Their Motion for Summary Judgment.

WHEREFORE, Defendants pray that this Court should grant summary judgment in favor of Defendants, declare that new Chapter 35 is constitutional and is consistent with the First and Fourteenth Amendments of the United States Constitution, deny Plaintiff's motion for summary judgment, dismiss Plaintiff's Complaint with prejudice, and assess costs against Plaintiff.

Respectfully submitted,

ARMSTRONG, TEASDALE, SCHLAFLY,  
DAVIS & DICUS

/s/ Jay A. Summerville  
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Attorneys for Defendants

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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**AFFIDAVIT OF MALCOLM C. DRUMMOND**

Comes now Malcolm C. Drummond, being first duly sworn upon his oath, who deposes and says as follows:

1. My name is Malcolm C. Drummond; my residence address is 162 River Ridge Way, Folsom, California 95630; and my business address is Harland Bartholomew and Associates, Inc. (hereinafter "HBA") 2233 Watt Avenue, Suite 330, Sacramento, California, 95828;

2. I make this affidavit as to certain facts which are within my personal knowledge; I further make this affidavit as to certain expert opinions and conclusions which I hold and have reached based both upon my own personal knowledge and experience and upon certain facts and data made known to me which are of types reasonably and customarily relied upon by experts in the fields of urban planning, land use, subdivision regulation, architectural controls, and zoning, as more fully and specifically described herein;

3. I am a professional city planner and for many years have been professionally engaged as a planner, advisor, and consultant for municipal and other governmental authorities in the development, drafting and execution of comprehensive plans, zoning regulations, central business district plans, renewal and redevelopment programs, environmental plans, park and recreational plans, land planning projects, subdivision regulations, architec-

tural controls, and similar land use, development and planning matters;

4. In 1952 I received the Bachelor of Science in Urban Planning degree from Michigan State University;

5. Since 1974, I have been an adjunct professor at Michigan State University, in the Department of Urban Planning and Landscape Architecture; I have also been a visiting lecturer on various urban planning matters at the University of Missouri—Columbia, Washington University (St. Louis), Michigan State University, University of Minnesota at Duluth, and Southern Illinois University at Carbondale;

6. I am a member of the American Planning Association, the American Institute of Certified Planners, and the American Society of Landscape Architects;

7. I have been recognized as a qualified expert witness and have in fact given expert opinion testimony by deposition or at trial in at least 29 cases in numerous jurisdictions on zoning, land use, development, annexation, property value, subdivision regulation, architectural control and related matters;

8. A true and accurate comprehensive resume of my professional education, training, background, professional affiliations, representative publications, work experience, and expert testimonial experience is attached hereto and incorporated herein by reference as Exhibit A;

9. From 1959 until 1988 I was a permanent resident in the St. Louis, Missouri metropolitan area; from 1968 until 1988 I was continuously a resident of the City of Ladue (hereinafter "the City", or "Ladue"); from 1971 until 1988 I resided at 3 Lorenzo Lane in the Lorenzo Road subdivision (which adjoins the Willow Hill subdivision where the plaintiff in this case resides);

10. HBA has continuously represented Ladue as its principal consultant in planning, zoning and land use

matters since the City's incorporation in 1936; from 1970 until I left the St. Louis metropolitan area in 1988, I was personally responsible for providing zoning, land use and planning services to Ladue;

11. HBA continues actively to represent the City in its land use and planning needs, and although my personal responsibility for Ladue matters has diminished since my departure from the St. Louis area, I have continued to make myself personally available to the City for consultation as needed since that time;

12. During the time that I was principal planning consultant for Ladue, I was also actively engaged in providing planning services to numerous other municipalities throughout the St. Louis metropolitan area, the State of Missouri, and the Midwest;

13. In the immediate St. Louis metropolitan area, I have personally drafted zoning ordinances or substantial revisions of zoning ordinances for the Cities of Alton (Illinois), Berkeley, Ellisville, Ferguson, St. Ann, and Webster Groves; I have personally drafted comprehensive plans in the St. Louis area for Alton, (Illinois), Bridgeton, Crestwood, Des Peres, Ellisville, Ferguson, Florissant, St. Ann, Sunset Hills, Webster Groves, and Fenton; and, I have personally drafted central business district plans in the St. Louis area for Crestwood, Des Peres, Ferguson, Ladue, St. Ann, and St. Louis;

14. Each community I have represented has its own particular physical features, geography, history, socioeconomic mix and comprehensive view of its own planning and land use goals; as would be expected, there are very great differences among the different communities in such matters as the nature and appearance of existing building stock, the historic pattern of land use, the existing and desired mix of residential, public and semi-public, commercial and industrial uses, the appearance, aesthetic quality and harmony of its environment, and the degree

of the regulation it is willing to impose and accept in order to achieve and maintain its land use goals and its aesthetic, environmental quality and other community planning objectives;

15. Among the chief aims of proper city planning are the maintenance and improvement of community aesthetics, property values, safety, quality and harmony of environment, and quality of life through the implementation of land use, zoning and development regulations which express the city's overall concept of the type of community it is and/or wants to be;

16. Ladue has had a unique history of settlement and development which have left it with a heritage of low population and building density, almost exclusively residential usage, large planted and natural open spaces, streams and forests, uncluttered landscape, and harmonious and beautiful buildings;

17. In order for me properly to advise the City in planning matters, I considered it essential to inform myself as to its history and heritage since a familiarity with a community's historical development is fundamental to assisting it in defining, understanding and executing its comprehensive plan for the present and the future;

18. The land in Ladue was initially settled as a result of French and Spanish land grants before 1803, New Madrid Earthquake grants after the great earthquakes of 1811-1812, and Presidential land grants following the War of 1812 and was principally owned in parcels of large acreage;

19. The City has a rich inventory of buildings of special historical and/or architectural significance; that opinion is based upon my own personal knowledge and observation as well as upon certain treatises on the history and architecture of Ladue prepared under the auspices of the Missouri Department of Resources and St. Louis



County Department of Parks and Recreation, referred to in paragraphs 20 and 21 herein;

20. A true, accurate, and authoritative survey of buildings of historic and/or architectural note in the eastern portion of Ladue is contained in "Historic Buildings Survey, Eastern Ladue, Ladue, Missouri 1986", prepared by Esley Hamilton for the St. Louis County Department of Parks and Recreation under a grant from the Missouri Department of Natural Resources. A true and accurate copy of said Survey is attached hereto and incorporated herein by reference as Exhibit B;

21. A true, accurate, and authoritative survey of buildings of historic and/or architectural note in the central portion of Ladue is contained in "Historic Buildings Survey, Central Ladue, Missouri 1987", prepared by Esley Hamilton for the St. Louis County Department of Parks and Recreation under a grant from the Missouri Department of Natural Resources. A true and accurate copy of said survey is attached hereto and incorporated herein by reference as Exhibit C;

22. As reflected in the treatises authored by Esley Hamilton referred to above, Ladue has a number of well-maintained homes dating from its early pioneer years which preserve the special historic heritage of the area. A few representative examples of these are:

- A. *The Red Farm House*, 600 S. Warson Road. This farm house is a typical rural farm dwelling of the early 19th Century built by a German immigrant who was a carpenter and potato farmer.
- B. *Twin Springs Farm*, 1700 S. Warson Road. This Presidential land grant home was built in 1832 as two log cabins.
- C. *The Denny Home or "Plantation"*, 10041 Conway Road. This home was originally constructed

in 1829 on land granted by President Monroe in 1824, and it was expanded during the Civil War.

D. *The Station*, 10002 Litzsinger Road. This property was obtained through a Congressional New Madrid Earthquake certificate. The present dwelling was built in 1834 by a German immigrant, and it served as the site of Evangelical Lutheran worship services until the construction of the church which is now the Parkway United Church of Christ at Clayton and Ballas Road.

23. The present City of Ladue was founded in 1936 by merger of the pre-existing residential villages of McKnight, Deer Creek, and Ladue;

24. Each of the three pre-existing villages was a pioneer in the adoption of strict zoning and land use regulations, drafted, in each case by Harland Bartholomew, in the late 1920's and early 1930's to assure preservation of the spacious, residential quality of the area in its future development;

25. The zoning ordinances of Deer Creek, Ladue and McKnight villages contained average required minimum residential lot sizes significantly larger than those which have ever been the norm or average for communities generally, and this reflected the predominant land use pattern at the time the ordinances were adopted;

26. The three predecessor villages to Ladue were unique in that they were among the only municipalities in the State of Missouri other than the Cities of St. Louis, Kansas City, and Springfield which adopted zoning ordinances *before* rather than after the surge in population growth, homebuilding, and suburban expansion which followed the Second World War; because of this, and because much of the land annexed by Ladue since its incorporation has been unimproved at the time of annexation, Ladue has been able to regulate and harmonize

its postwar building and population growth consistently with an over-arching comprehensive zoning and aesthetics plan with little need to accommodate pre-existing non-conforming uses;

27. The City of Ladue was planned from its very creation to continue to be, and to develop as, principally a residential area building on the regulations and traditions of the three pre-existing villages;

28. The renowned city planner, Harland Bartholomew, the founder of HBA, was engaged by Ladue shortly after its incorporation in 1936 to prepare a Comprehensive City Plan to guide the City's development. A true and accurate copy of "A Preliminary Report Upon a City Plan, City of Ladue, Missouri", submitted by Mr. Bartholomew to the City Council of Ladue in March, 1939 and then adopted by the City, is attached hereto and incorporated herein by reference as Exhibit D;

29. A true and accurate published biographical resume of the late Mr. Bartholomew (who was a colleague and personal friend of mine for many years until his death), noting Mr. Bartholomew's many and varied accomplishments as of the publication date in 1952, is attached hereto and incorporated herein by reference as Exhibit E;

30. Ladue's Comprehensive City Plan is truly singular in that it was adopted very early in the City's existence, it has never been amended in its 52 years of use, and it is still in full force and effect today; this is highly unusual since, to my personal knowledge, most cities amend or revise their comprehensive plans at least every 10 to 15 years and I am not aware of any city which has adhered to a single, unamended, comprehensive plan as long as Ladue has done so;

31. Since the adoption of the Comprehensive City Plan in 1939, Ladue has been both consistent and unwavering in its implementation, and it has been both consistent and unwavering in disapproving any architectural,

aesthetic, zoning or land use changes which would out of keeping with the original vision set out by Harland Bartholomew;

32. Shortly after its incorporation, Ladue adopted an ordinance drafted by HBA which consolidated and codified the zoning districts and land use restrictions of the three predecessor villages;

33. A true and accurate copy of Ladue's zoning ordinance in its present form is attached hereto and incorporated herein by reference as Exhibit F;

34. A true and accurate copy of Ladue's zoning map in its present form is attached hereto and incorporated herein by reference as Exhibit G;

35. Ladue has permitted very few spot zoning changes and has not permitted any significant modification of its zoning districts and its zoning map has remained essentially unchanged for over 50 years (except, of course, for the addition of land annexed by the City); Ladue has granted hardship variances from minimum size, set back distance and similar requirements very rarely, and far less frequently than most other cities [sic];

36. Ladue has repeatedly and consistently denied attempts to decrease the restrictiveness of its residential zoning districts or to change residential zoning areas to commercial use;

37. For example, Ladue has consistently and successfully resisted all attempts to change any zoning on its Lindbergh Boulevard frontage from residential to commercial, even though Lindbergh Boulevard is a major commercial artery in metropolitan St. Louis and is zoned and used for commercial or mixed commercial and residential purposes in nearly every other St. Louis County community through which it passes;

38. Over many years, Ladue has demonstrated its willingness vigorously to defend its right to impose strict



zoning, subdivision, and architectural review regulations in conformity with its Comprehensive Plan and it has consistently prevailed in defeating all legal challenges: in *Flora Realty Investment Co. v. City of Ladue*, 246 S.W.2d 771 (Mo. banc 1952), the Missouri Supreme Court upheld the validity and reasonableness of Ladue's Comprehensive Plan as well as the validity of its 3-acre minimum lot single family residential zoning of a property owner's unimproved tract of more than 100 acres; in *Deacon v. City of Ladue*, 294 S.W.2d 616 (Mo. App. 1956), the Court of Appeals upheld Ladue's single-family residential 10,000 square foot minimum zoning of property which the owner believed should be commercial; in *Stoyarnoff v. Berkeley*, 458 S.W.2d 305 (Mo. 1970), the Missouri Supreme Court upheld Ladue's authority to create an architectural board with complete power to regulate architectural design and appearance for the purpose of promoting and maintaining general conformity the style and design of surrounding structures; in *Tealin Co. v. City of Ladue*, 541 S.W.2d 544 (Mo. banc 1976), the Missouri Supreme Court upheld the City's right to maintain single-family residential rather than commercial zoning on Lindbergh Boulevard (one of the major commercial arteries in St. Louis County); and in *Gerchen v. City of Ladue*, 784 S.W.2d 232 (Mo. App. 1989), the Missouri Court of Appeals rebuffed the attempt of another property to change the zoning classification of Lindbergh Boulevard property from single family residential to commercial.

39. Although population density in Ladue is very low, there are few large tracts of residential, and no large tracts of commercial or industrial land remaining to be developed in the City given existing zoning regulations;

40. Ladue has strictly controlled the type of commercial businesses which have developed in its limited commercial areas through zoning regulations and special use permit requirements; as a result, except for two supermarkets and four gasoline filling stations, Ladue's com-

mercial establishments are almost exclusively small walk-in retail, restaurant, and banking businesses with less than 15,000 square feet; this is extremely unusual for a city of Ladue's size and population;

41. Since its inception, Ladue has made extraordinary and consistent efforts to preserve and enhance the aesthetic quality of its environment; to my personal observaton, Ladue has made more sustained and consistent efforts in this regard than any other municipality which I have professionally advised, or with which I have been professionally associated, bar none;

42. For example, for reasons of aesthetics, privacy, environmental harmony and visual quality Ladue, to my personal knowledge, has never allowed such common accessory uses of property as the following: unscreened parking of recreational vehicles or boats; outside storage of building materials; unscreened parking of commercial trucks; outside parking of vehicles being repaired; or visible satellite dishes;

43. Further, for the same reasons, Ladue has never permitted such common zoning uses as apartment buildings, duplexes, condominiums, hotels, motels, rooming houses, or parking garages;

44. In the interests of aesthetic and visual harmony, the City has carefully regulated all architectural changes since its earliest years; an Architectural Review Board was first established in 1940, and all applications for building permits affecting the outward appearance of buildings either already constructed or to be constructed must be reviewed by this Board before being approved by the Building Commissioner;

45. Unlike most of its neighboring suburban communities (including the adjacent county seat of Clayton), Ladue places strict limits on the height of buildings; in the interests of aesthetic harmony, no building (including an office building) can exceed 2½ stories; there is



only one building in Ladue which exceeds that limit (three stories, by virtue of a special use permit);

46. As I mentioned above, Ladue is—by choice—predominantly a residential community, very small portions of which have been zoned for commercial and industrial use;

47. Ladue consists of 5,456 acres or 8.566 square miles, of which a total of approximately 84% or 5,283 acres is in residential use (including 700 acres of public and private roads), approximately 13.9% or 721 acres is in public or semi-public use such as schools, public parks, and religious institutions, approximately 1% or 51 acres is in commercial use, and approximately 2% or 102 acres is in industrial use;

48. A true and accurate color-coded map of the City of Ladue showing the areas which are zoned residential, commercial and industrial is attached hereto and incorporated herein by reference as Exhibit H;

49. Ladue's land use pattern is extremely atypical of cities generally, but it is completely consistent with Ladue's history, its Comprehensive Plan, and its desire to maintain an open, rural residential community of uncluttered appearance; according to land use statistics compiled and maintained by HBA for the St. Louis County cities of Ballwin, Creve Coeur, Des Peres, Ellisville, Frontenac, Manchester, and Town & County, those cities have the following average land use ratios: residential 58.1%; public and semi-public 11.3%; commercial 8.5%; and industrial 1.3%;

50. Ladue is a community of larger than average residential lots, extensive landscaping with plant materials and large public, semi-public, and private open spaces;

51. Ladue's zoning provides for much greater than average set-back requirements from lot boundaries;

52. Ladue is one of only a handful of communities in the United States with zoning districts for 3 acre residential lots;

53. Ladue is unique in the high percentage of its area which is zoned for the much larger than average 3 acre or 1.8 acre lot sizes; 17.6% of Ladue's total land is zoned for 3 acre residential usage and 41.1% is zoned for 1.8 acre residential usage; more than 75% of all of the land in Ladue is zoned for single family usage with minimum residential lot sizes of three quarters ( $\frac{3}{4}$ ) acre (30,000 square feet) or greater;

54. To my knowledge many homes in Ladue are on lots which exceed the minimum requirements of their zoning districts;

55. Although approximately 84% of Ladue's land is zoned for residential use, residential structures actually cover less than 5% of the land in Ladue, due to Ladue's historic pattern of development and its zoning favoring larger than average residential lot sizes and single-family usage; this is an extremely low building density and is one of the principal reasons for Ladue's spacious, open, rustic and uncluttered appearance;

56. The large lot sizes and low building density have allowed for the maintenance of large areas of plant materials, woods, streams and open areas which make Ladue unique in the Midwest; I have done professional work for such midwestern cities as Indianapolis, Detroit, Cleveland, Chicago, Minneapolis, Omaha, Kansas City, Memphis, Dallas and Houston and, while each has lovely residential suburbs, in my opinion none has any suburb which can compare with Ladue in its aesthetic ambience and privacy or in the charm and visual quality it has been able to maintain through preservation of its low density, rustic, heavily-wooded, uncluttered and open appearance;

57. Ladue is distinctive in that it is virtually the only St. Louis suburb which has left its natural drainage ways in their natural state; most of Black Creek (at least two miles) and nearly all of Deer Creek and its tributaries (at least ten miles) have been left in their natural condition; almost without exception, other St. Louis and midwestern suburbs have boxed and channelized their streams, often underground, to accommodate development; Ladue's natural streams and woods greatly enhance the aesthetic impression of a rustic, natural, open and uncluttered residential community;

58. Ladue is very unusual in that, to my knowledge, in fewer than six of the City's approximately 102 residential subdivisions were most of the homes built by a single developer/builder; for this reason Ladue's residential areas have a much greater than average charm and aesthetic appeal and they have largely avoided the subdivision tract appearance of many modern suburbs;

59. Except for a small percentage of Ladue's homes which are located on Litzinger Road, Warson Road, McKnight Road, Lay Road, Clayton Road, Ladue Road, Price Road, Old Warson Road, Des Peres Road and Lindbergh Boulevard, the homes in Ladue are contained within private subdivisions, with deed covenants and restrictions administered by subdivision trustees restricting the use of private property within the subdivisions;

60. While many suburban communities have residential subdivisions with indenture restrictions as Ladue does, Ladue is the only city I know where virtually all subdivision streets are privately rather than publicly owned and maintained;

61. 207 of Ladue's 210 subdivision streets and lanes are privately owned and maintained by subdivision trustees; by tradition and trustee decisions, these streets—while rustic, charming and private—typically are extremely narrow (typically 16, 18 or 20 feet), lack curbs

or gutters, lack on-street parking space, lack adjacent sidewalks, and are partially obstructed by moveable obstacles known as "horses" to slow traffic; they are typically undulating and winding;

62. A very good example of Ladue's fidelity to its original Comprehensive Plan is the fact that the City's zoning map and its zoning districts are essentially the same today as they were when the city was created (except for the addition of annexed land)—such changes as have been made have been minor and essentially insignificant;

63. Ladue's zoning and land use regulations and its unswerving fidelity to Harland Bartholomew's original plan have been highly successful in achieving the quality of environment, aesthetic excellence, and property values which are the aim of the Comprehensive Plan;

64. In 1974, the City engaged HBA to prepare a study and report on the effectiveness of the original Comprehensive Plan and original comprehensive zoning ordinance after their first 35 years of existence; the basic conclusion of the 1974 study, which I personally prepared, was that the City's Comprehensive Plan was working very well and needed no amendment. A true and accurate copy of my study, "A Preliminary Report Upon the Comprehensive Plan, City of Ladue, Missouri, April, 1974," is attached hereto and incorporated herein by reference as Exhibit I;

65. Ladue has made a major effort during the last fifteen years to improve the aesthetics, beauty and physical harmony of the City's principal commercial area on both sides of Clayton Road from Conway Road westwardly to the Highway 40 overpass (now known as "The Special Business District"), as well as the small commercial areas at the intersection of Lindbergh and Clayton Road, the intersection of Clayton Road and Price Road,

on Ladue Road and the small industrial area near Hunter Avenue and Highway 170;

66. In 1983, after many years of planning, the City created the Special Business District consisting of the City's principal commercial area on Clayton Road between Conway and Highway 40; by means of City appropriations and special assessments the City was able to accomplish the following:

- a) Repavement of the road;
- b) Improvement of sewer and water drainage;
- c) Installation of new and aesthetically attractive traffic signals;
- d) Removal of all overhead telephone poles and wires and electric poles and wires from the street scape;
- e) Planting of trees and shrubs and the placement of flower tubs on both sides of the street;
- f) Construction of sidewalk on the north side of Clayton Road.

67. The aesthetics and appearance of the Special Business District were carefully planned and executed by the City in consultation with property owners and with HBA which, under my direction, prepared a detailed study and recommendation dated June 24, 1982, a true and accurate copy of which is attached hereto and incorporated herein by reference as Exhibit J;

68. A true and accurate copy of the color rendering of the 1982-1983 Special Business District Improvements prepared by HBA is attached hereto and incorporated herein by reference as Exhibit K;

69. A true and accurate copy of the blueprint for the 1982-1983 Special Business District Improvement pre-

pared by HBA is attached hereto and incorporated herein by reference as Exhibit L;

70. The aesthetic upgrading and improvement of the Special Business district were quite dramatic;

71. True and accurate photographs of the appearance of the Special Business District before the improvements made in 1982-1983 are attached hereto and incorporated herein by reference as Exhibits M through P;

72. True and accurate photographs of the appearance of the Special Business District after the improvements made in 1982-1983 are attached hereto and incorporated by reference as Exhibits Q through T;

73. As a result of the aesthetic improvements made by Ladue in connection with the Special Business District improvements, Ladue received the Governor's Town Tree-scape Award in 1984 from Governor Christopher Bond. A true and accurate copy of the Award is attached hereto and incorporated herein by reference as Exhibit U;

74. The intense public interest in maintaining exceptionally high aesthetic and environmental standards is demonstrated by long standing and continuous efforts by both the City and private organizations to upgrade, improve and beautify all areas visible to the public;

75. As Ladue's Planning consultant and as a long-time former resident I am familiar with the City's Civic Improvement Committee, which was created in the late 1940's and has remained in continuous active existence ever since, to foster aesthetic improvement of all public and semi-public areas of the City; this group facilitates and oversees the careful planning, planting, care and maintenance of trees, shrubs and flowers in public and semi-public areas;

76. The extent and the success of the beautification efforts of the City, the Civic Improvement Committee and other local organizations in Ladue have been outstanding and unique in my experience; to my personal knowledge,



these projects extend to the careful planting, maintenance and care of flowers, trees and shrubs in all public and semi-public areas, both commercial and non-commercial, and they even extend to the landscaping, planting and care of many state highway under-passes and access and entry ramps in the City;

77. As a city planner, I hold the firm opinion that the location, existence and design of signage in a community directly affect the visual and aesthetic appeal, and that the careful regulation of signage is an essential element of city planning;

78. I also hold the opinion that most types of temporary signs and some types of permanent signs, whether on private property or on public easements or in the public right-of-way, create a special risk of visual blight through proliferation because there are no natural limitations on their number or duration;

79. I am personally aware that many interest groups, lobbying groups, political organizations and other associations and groups distribute signs and placards in volume from time to time for display in the St. Louis metropolitan area, both in private yards and in public areas and the public rights-of-way;

80. I am also personally aware that many St. Louis suburban communities that do not restrict such signs experience unsightly proliferation of temporary or permanent signs constructed by residents or merchants themselves for many purposes;

81. Based upon my personal knowledge and experience, many municipalities in St. Louis County which do not strictly limit the erection of signs frequently experience a proliferation of yard signs and placards and temporary and permanent signs in the public rights-of-way; this is true especially in the campaigns before municipal, primary, or general elections but such proliferation can and often does

occur at other times as well; I have observed such proliferation in Ferguson, Webster Groves, St. Ann, Berkeley, Manchester and Ellisville, which are all cities in the St. Louis metropolitan area which I have served as a Planner;

82. It is a basic and accepted principle of urban planning, and a principle which I hold to be fundamental, that a proliferation of signs causes visual blight;

83. It is also my opinion that signs and billboards naturally cause visual blight as well as impinge on privacy because those who see them are a "captive audience";

84. I was very actively involved in assisting communities to draft ordinance excluding billboards from residential areas to prevent visual blight;

85. It is my considered professional opinion that an impairment of the aesthetic quality of a City such as Ladue negatively affects property values;

86. A proliferation of signs in a commercial area degrades the overall aesthetic quality of the area and of the community as a whole; a proliferation of signs in a residential area degrades the aesthetic quality and the "curb appeal" of the homes in the area and has a direct negative bearing on the length of time it takes to sell a home and the price which the home will command;

87. It is also my opinion based on my education, training, experience and professional study, that a proliferation of signs in any particular area may cause a safety hazard by distracting the attention of drivers; that this view is widely accepted as valid is reflected in *Street Graphics and the Law*, Daniel R. Mandelker and William R. Ewald, American Planning Association, 1971 (revised printing copyright 1988), a treatise which I regard as authoritative;

88. It is a widely accepted guideline of city planning that a proliferation of signage in commercial areas mixed

with uncontrolled access to commercial thoroughfares creates a dangerous potential for accidents;

89. In the St. Louis area, for example, the commercial area along Clayton Road in Ladue is much safer for drivers, in my opinion, than either the commercial strips of Manchester Avenue or Olive Street Road extending from the City of St. Louis to Interstate 270, in large part because Ladue severely limits both commercial and non-commercial signage on Clayton Road, and the cities along Manchester Road and Olive Street Road do not impose severe sign restrictions—resulting in distracting clutter;

90. Ladue is virtually the only city of which I am aware where nearly 100% of the residential streets are privately rather than publicly owned, and which by design are unusually narrow, largely winding, and undulating, have no curbs or gutters, have no room for on street parking, and have no sidewalks; in my opinion, this widespread condition may cause a much greater traffic hazard arising from a proliferation of yard signs that would be the case in communities which have conventional residential streets;

91. Ladue has strictly limited signage in its city limits in the interests of aesthetics, privacy, maintenance of property values, and safety since it was incorporated;

92. From the earliest days of the three predecessor villages to Ladue until the late 1950's, Ladue had strict signage restrictions and prohibitions incorporated in the applicable zoning ordinances themselves; true and accurate copies of those zoning ordinances are attached hereto and incorporated herein by reference as Exhibits V through Z;

93. Beginning in 1959, owing in large part to the need to regulate commercial signage more comprehensively, the sign restrictions of Ladue—and those of many other communities—became more complex and lengthy than had previously been the case; because of this, Ladue, like many

other cities, separated its signage restrictions from its zoning code and set them apart in a separate ordinance and City Code Section; true and accurate copies of Ladue's sign ordinances and their amendments from 1959 through the present time are attached hereto and incorporated herein by reference as Exhibits AA through JJ;

94. I have had an opportunity to read and analyze Ladue's new sign ordinance adopted on January 21, 1991, with the minor amendments proposed to be adopted by the City Council on February 25, 1991, and it is my opinion that this ordinance prevents a proliferation of signs by disallowing all signs not naturally limited in number, except those signs which are directly related to promoting the public safety (such as house numbers and home identification signs, small in size, which promote the City's interests in efficient police and fire protection);

95. It is my opinion, based on my education, training, background, and professional experience that the exceptions permitted under Ladue's new sign ordinance of January 21, 1991, (as proposed to be amended on February 25, 1991) all either contribute materially to the public safety and welfare, or, because of their limited number, location and size, do not substantially impinge upon the City's interests in privacy, aesthetics, safety, and maintenance of property values;

96. It is further my opinion, based on my long professional experience as planning consultant to the City of Ladue that the policies, interests and purposes stated in Article I of the Ladue's new sign ordinance of January 25, 1991, (as proposed to be amended on February 25, 1991) are fully consistent with principles and policies which have guided the City in its land use, zoning and planning decisions during the 55 years HBA has represented it;

97. In my opinion, the new sign ordinance is completely consistent with and rationally promotes the City's interests in aesthetic excellence, privacy, maintenance of

property values and safety, which have been the City's guiding zoning, land use and sign regulatory principles over the 55 years that HBA has represented it;

98. As a long-time resident of Ladue, and as the City's long-time planner, I am personally aware that plaintiff has at least the following ample and effective alternative forms of expression actually available to her for the expression of the message she desires to convey on her sign, each of which would be fully consistent with Ladue's zoning, land use, and sign ordinances and not inconsistent with Ladue's strong interests in aesthetics, privacy, maintenance of property values, and safety:

- A. Letters, handbills, or flyers mailed to the residents of Willow Hill subdivision or to a broader audience;
- B. Letters, handbills, or flyers personally delivered to the residences in the Willow Hill subdivision or to a broader audience;
- C. Person-to-person and/or door-to-door solicitation of neighbors in Willow Hill subdivision (or a broader audience) to support plaintiff's position;
- D. Telephone calls to her Willow Hill neighbors or to a broader audience to solicit support for plaintiff's views;
- E. Paid advertisements in newspapers of local circulation in Willow Hill subdivision in Ladue and/or over a broader area including but not limited to the St. Louis Dispatch and the St. Louis Suburban Journal;
- F. Use of a bumper sticker bearing a similar legend on plaintiff's automobile;
- G. Speaking at neighborhood meetings;
- H. Inviting neighbors to tea or coffee or cocktails in plaintiff's own home to discuss the issue of

concern to her and to seek to persuade others to adopt her view;

- I. Writing letters to the editor for newspapers and other periodicals in circulation in the City of Ladue and metropolitan St. Louis including, but not limited to, the St. Louis Post Dispatch and the St. Louis Suburban Journal;
- J. Calling into radio talk shows in suburban St. Louis sponsored by several local radio station;
- K. Making use of "public forum" commentary opportunities provided by most of all of the television stations in the metropolitan St. Louis area including the local affiliates of each of the three national commercial networks, the local affiliate of the Public Broadcasting System, and two local independent stations;
- L. Arrangement for use of numerous public premises of county, city and school district or library district, or of numerous private premises of schools and churches, located in Ladue, for a public meeting.

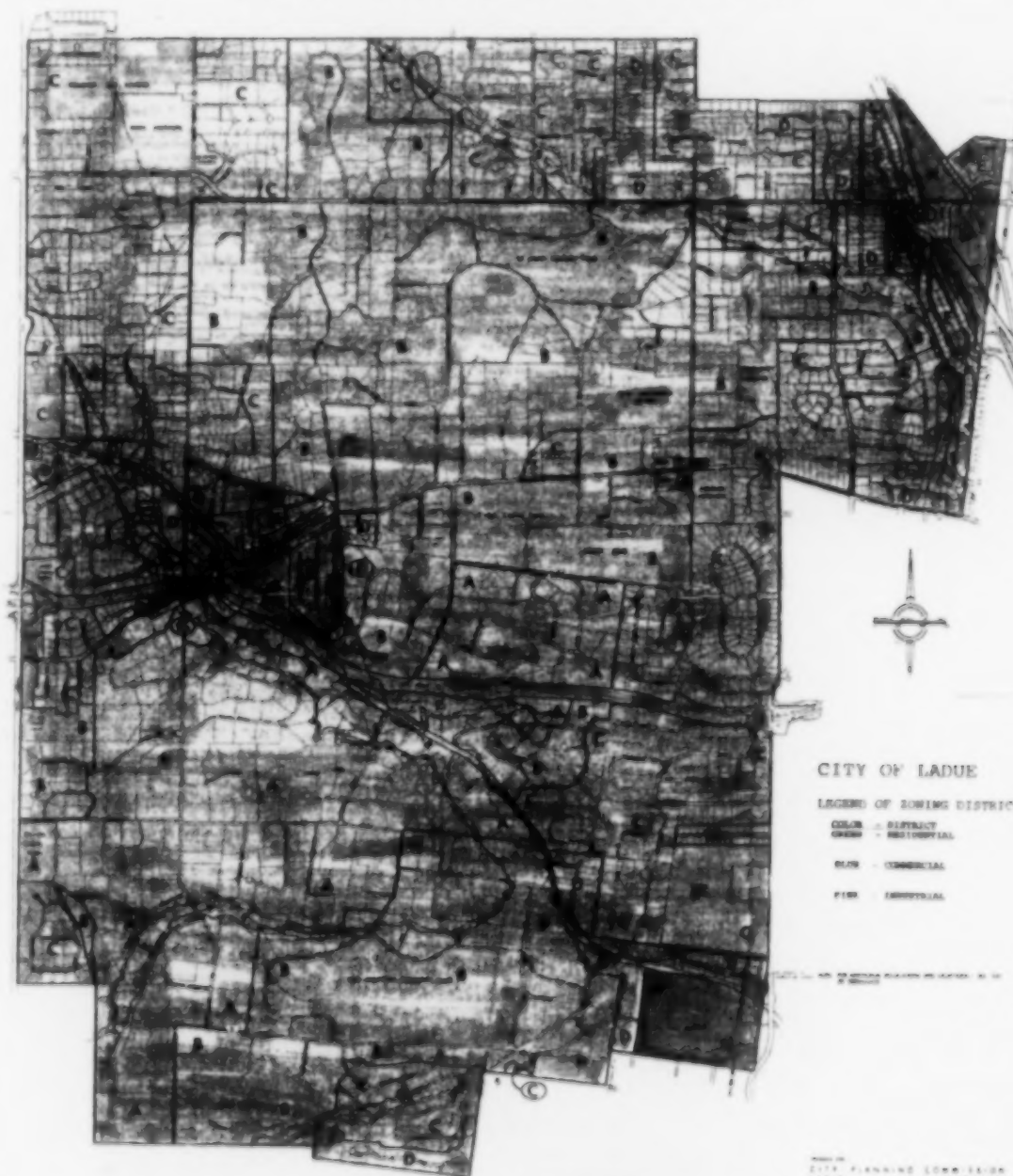
/s/ Malcolm C. Drummond  
MALCOLM C. DRUMMOND

[Notarization Omitted in Printing]



# CITY OF LADUE

## SAINT LOUIS COUNTY, MISSOURI



EXHIBIT

DRUMMOND II

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
— EASTERN DIVISION

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[Caption Omitted in Printing]

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AFFIDAVIT OF EDITH J. SPINK

COMES NOW Edith J. Spink, being first duly sworn upon her oath, who deposes and says as follows:

1. My name is Edith J. Spink and since 1967 I have resided at 9 Log Cabin Drive, Ladue, Missouri;

2. I make this affidavit based upon my personal knowledge of the facts, circumstances and occurrences to which it relates;

3. I have read the Affidavit of Ladue's longtime City Planner, Malcolm Drummond, filed herein, and I have provided Mr. Drummond with true and accurate copies of numerous documents from the archives and regular business records of the City of Ladue for use in his Affidavit, as more fully described herein;

4. I was elected Mayor of the City of Ladue (hereinafter referred to as "The City" or "Ladue") in 1975 and I have served continuously in that office since then;

5. Prior to my election as Mayor, I served for 5 years, from 1970 until 1975, as an elected member of the Ladue Board of Alderman/City Council (hereinafter referred to as "City Council"); during the last three years of that City Council service I was the Acting President of the City Council;

6. I was educated at Mary Institute in Ladue, which I attended for eight years, and at Washington University,

from which I received the Bachelor of Laws degree in 1945 and the Bachelor of Arts degree in 1946;

7. In 1945, I was admitted to the Missouri Bar; while I have never engaged in the active private practice of law, I was honored to receive the the Distinguished Law Alumni Award from the Washington University School of Law in 1988;

8. Ladue is a residential community in suburban St. Louis County with a population of 8,847;

9. Classified as a city of the fourth class, Ladue is organized under Chapter 79 of the Revised Statutes of Missouri, and it is governed by that Chapter and other statutory provisions regulating governance of cities of the fourth class;

10. Ladue's City Council consists of six elected councilmen/aldermen, two from each of the City's three wards;

11. As Mayor, I have the privilege of sitting in, and presiding over, City Council meetings, but I am not permitted to vote on any matter pending before the Council except in case of a tie (Section 79.120 R.S. Mo. 1986);

12. No Ladue ordinance can become effective without concurring affirmative votes of at least four (4) of the six (6) elected Council members (Section 79.130 R.S. Mo. 1986);

13. When any ordinance is passed by the City Council, the Mayor has the duty either to sign the ordinance, in which case it takes effect according to its terms, or to veto the measure and return it to the Council for reconsideration; upon reconsideration, the ordinance becomes effective in spite of the Mayor's veto upon the affirmative vote of at least four Councilmen (Section 79.140 R.S. Mo. 1986);

14. I have lived throughout my entire lifetime in the St. Louis metropolitan area; before moving to Ladue I

resided for many years in the City of St. Louis, as well as in University City and Clayton;

15. While I was living in other parts of the metropolitan area, I was personally very familiar with Ladue since I had attended school there for eight (8) years, and I had many occasions to visit close relatives and friends who were long-time residents;

16. My husband and I chose to move to Ladue in 1967 because we believed that its high aesthetic standards, the high value it placed on maintaining a spacious, country-like, beautiful, and uncluttered appearance in its residential and commercial areas, and the importance it accorded to both privacy and environmental harmony, made it uniquely appealing as a residential community in this area;

17. My two decades of elected public service in Ladue have been principally spent in an ongoing effort on my part to encourage, foster and enhance the distinctive qualities of aesthetic excellence, privacy and environmental harmony which drew me to Ladue in the first place;

18. Ladue has had a unique history of settlement and development which have left it with a heritage of low population and building density, almost entirely residential usage, large planted and natural open spaces, streams and forests, uncluttered landscape, and harmonious and beautiful buildings;

19. After moving to Ladue, I became aware of the widely-known historical facts that the land in the City was initially settled as a result of French and Spanish land grants before 1803, New Madrid Earthquake grants after the great earthquakes of 1811-1812, and Presidential land grants following the War of 1812 and that it was principally owned in parcels of large acreage;

20. Based on my personal knowledge and observations, the City has a rich inventory of buildings of special historical and/or architectural significance;



21. Eastern Ladue was the subject of an authoritative survey of buildings of historic and/or architectural note entitled "Historic Buildings Survey, Eastern Ladue, Ladue, Missouri 1986", prepared by Esley Hamilton for the St. Louis County Department of Parks and Recreation under a grant from the Missouri Department of Natural Resources. A true and accurate copy of that document is attached to, and incorporated in, The Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. B;

22. Central Ladue was the subject of another authoritative survey of buildings of historic and/or architectural note contained in "Historic Buildings Survey, Central Ladue, Missouri 1987", also prepared by Mr. Hamilton for the St. Louis County Department of Parks and Recreation under a grant from the Missouri Department of Natural Resources. A true and accurate copy of that survey is attached, and incorporated in the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. C;

23. To my personal knowledge, Ladue has many well-maintained historic homes dating from its early pioneer years which preserve the special heritage of the area. Some representative examples of these are:

- A. *The Red Farm House*, 600 S. Warson Road. This farm house is a typical rural farm dwelling of the early 19th Century built by a German immigrant who was a carpenter and potato farmer.
- B. *Twin Springs Farm*, 1700 S. Warson Road. This Presidential land grant home was built in 1832 as two log cabins.
- C. *The Denny Home or "Plantation"*, 10041 Conway Road. This home was originally constructed in 1829 on land granted by President Monroe in 1824, and it was expanded during the Civil War.

D. *The Station*, 10002 Litzsinger Road. This property was obtained through a Congressional New Madrid Earthquake certificate. The present dwelling was built in 1834 by a German immigrant, and it served as the site of Evangelical Lutheran worship services until the construction of the church which is now the Parkway United Church of Christ at Clayton and Ballas Road.

E. *The Moydalgan House*, 8956 Moydalgan Drive. This home was constructed by the McKnight family in 1848 and enlarged in 1907; its original outbuildings are still intact;

24. The present City of Ladue was founded in 1936 by merger of the pre-existing residential villages of McKnight, Deer Creek, and Ladue; the archives and regular business records of the three villages are now maintained as part of the archives and general business records of the City of Ladue under my overall custody and control;

25. The three villages had all employed Harland Bartholomew, the renowned City Planner, the founder of Harland Bartholomew & Associates ("HBA") to represent and advise them in planning, land use and regulatory matters, and the City of Ladue has continuously employed that firm for the same purpose from 1936 to the present time;

26. A biographical resume of the late Mr. Bartholomew published in 1952, is attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. E;

27. Each of the three pre-existing villages was a pioneer in the adoption of strict zoning and land use regulations, drafted, in each case by Harland Bartholomew, in the late 1920's and early 1930's to assure preservation

of the spacious, residential quality of the area in its future development;

28. The zoning districts of Deer Creek, Ladue and McKnight Villages contained average required minimum residential lot sizes which were comparatively large, including significant areas zoned for 3-acre, 1.8 acre, and 30,000 square feet ( $\frac{3}{4}$  acre) residential lots; these relatively large lots reflected the predominant residential land use pattern at the time the ordinances were adopted;

29. The present City of Ladue was planned from its creation to continue to be, and to develop as, primarily a residential area building on the regulations and traditions of the three pre-existing villages;

30. Shortly after the city's incorporation in 1936 it engaged Mr. Harland Bartholomew to prepare a Comprehensive City Zoning Plan to guide the City's development. A true and accurate copy of "A Preliminary Report Upon a City Plan, City of Ladue, Missouri", submitted by Mr. Bartholomew to the City Council of Ladue in March, 1939 describing the plan adopted by the City, as it appears in the archives and records of the City kept in the regular course of the City's business, is attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. D;

31. Ladue's Comprehensive City Plan was incorporated upon its adoption into the City's zoning code and while there have been minor changes to the zoning code over the years the Comprehensive Plan has never been amended in its 52 years of use, and it is still in full force and effect today;

32. Since the City adopted the Comprehensive City Plan recommended by Mr. Bartholomew at the time of the City's creation, it has been both consistent and unwavering in implementing it, and it has been both consistent and unwavering in disapproving any architectural, aesthetic, zoning or land use changes which would be out

of keeping with the original vision set out by Harland Bartholomew;

33. Shortly after its incorporation, and while Mr. Bartholomew was in the process of preparing the City's Comprehensive Plan, Ladue adopted an ordinance, also drafted by HBA, which consolidated and codified the zoning districts and land use restrictions of the three predecessor villages; a true and accurate copy of Ladue's Original Zoning Ordinance as it appears in the archives and records of the City kept in the regular course of the City's business is attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. Y;

34. A true and accurate copy of Ladue's present zoning ordinance as it appears in the archives and records of the City kept in the regular course of the City's business, and in the official City Code, is attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. F;

35. A true and accurate copy of Ladue's zoning map in its present form as it appears in the archives and records of the City kept in the regular course of the City's business is attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. G;

36. To my knowledge, Ladue has not permitted any significant spot zoning changes since its earliest years and it has never permitted any significant modification of its zoning districts and its zoning map has remained essentially unchanged for over 50 years (except of course for the addition of property acquired by annexation); the city, in my experience, has granted hardship variances from minimum size, setback distance and similar requirements rarely;

37. Ladue has repeatedly and consistently denied attempts to decrease the restrictiveness of its residential zoning districts or to change residential zoning areas to commercial use;

38. For example, Ladue for many years has consistently and successfully resisted attempts to change any zoning on its Lindbergh Boulevard frontage from single-family residential to commercial, even though Lindbergh Boulevard is a major commercial artery in metropolitan St. Louis;

39. The City has also successfully resisted, with my full and active support, applications to change the zoning classification along the south side of the "Outer Road" of State Highway 40 to allow for commercial development, believing that such development would inevitably bring visual blight and urban clutter;

40. Over many years, Ladue has demonstrated its willingness to defend vigorously its right to impose strict zoning and architectural review regulations in conformity with its Comprehensive Plan and it has consistently prevailed in defeating all legal challenges to its zoning and architectural restrictions as reflected in numerous reported appellate decisions: in *Flora Realty Investment Co. v. City of Ladue*, 246 S.W.2d 771 (Mo. banc 1952), the Missouri Supreme Court upheld the reasonableness and validity of Ladue's overall comprehensive zoning plan and specifically upheld the validity of its 3-acre minimum lot single family residential zoning of a property owner's unimproved tract of more than 100 acres; in *Deacon v. City of Ladue*, 294 S.W.2d 616 (Mo. App. 1956), the Court of Appeals upheld Ladue's single-family residential 10,000 square foot minimum zoning of property which the owner believed should be commercial; in *Stoyarnoff v. Berkeley*, 458 S.W.2d 305 (Mo. 1970), the Missouri Supreme Court upheld Ladue's authority to create an Architectural Review Board with complete power to regulate architectural design and appearance for the purpose of promoting and maintaining general conformity with the style and design of surrounding structures; in *Tealin Co. v. City of Ladue*, 541 S.W.2d 544 (Mo. banc 1976), the Missouri Supreme Court upheld the City's right to main-

tain single-family residential rather than commercial zoning on Lindbergh Boulevard (one of the major commercial arteries in St. Louis County); and in *Gerchen v. City of Ladue*, 784 S.W.2d 232 (Mo. App. 1989), the Missouri Court of Appeals rebuffed the attempt of another property owner to change the zoning classification of its Lindbergh Boulevard property from single family residential to commercial;

41. Although population density in Ladue is very low, there are very few large tracts of residential land, and no tracts of commercial or industrial land remaining to be developed in the City given existing zoning regulations;

42. Ladue has strictly controlled the type of commercial businesses which have developed in the limited commercial areas through zoning regulations and special use permit requirements; as a result, except for two supermarkets and four gasoline filling stations, Ladue's commercial establishments are almost exclusively small walk-in retail, restaurant, and banking businesses with less than 15,000 square feet;

43. This small degree of commercial development is in striking contrast to the situation in each of Ladue's immediately adjacent neighbors: Clayton, Richmond Heights, Brentwood, Frontenac, Creve Coeur, Olivette, and University City;

44. In the twenty one (21) years of my service as an elected official, Ladue has continued its historic tradition of making extraordinary and consistent efforts to preserve and enhance the aesthetic quality of its environment; in 1981 I was honored for my personal efforts in this area with the award of the Garden Club of America's Medal of Merit for exceptional contributions in the field of civic achievement;

45. For example, for reasons of aesthetics, privacy, environmental harmony and visual quality, Ladue has never allowed such common accessory uses of property



as: unscreened parking of recreational vehicles, boats, or commercial trucks; outside parking of vehicles being repaired; installation of front fences exceeding 42 inches in height or lacking at least 40% of openness; cyclone fences; or installation, except in extraordinary circumstances, of unscreened satellite dishes;

46. For the same reasons, Ladue has never permitted such ubiquitous zoning uses as apartment buildings, duplexes, condominiums, hotels, motels, rooming houses, fraternity or sorority houses, or parking garages;

47. In the interests of aesthetic and visual harmony, the City has carefully regulated all architectural changes since its earliest years; and Architectural Review Board was first established in 1940, and all applications for building permits affecting the outward appearance of buildings either already constructed or to be constructed must be reviewed by this Board before being approved by the Building Commissioner;

48. Unlike most of its neighboring suburban communities (including the adjacent county seat of Clayton), Ladue places strict limits on the height of buildings; in the interests of aesthetic harmony, no building (including an office building) can exceed 2½ stories; at the present time there is only one building in Ladue which exceeds that limit (three stories, by virtue of a special use permit);

49. Ladue has chosen to be, and has vigorously sought to remain, predominantly a residential community, very small portions of which have been zoned for commercial and industrial use;

50. The present city limits contain 5,456 acres or 8.566 square miles, of which a total of approximately 84% or 5,283 acres is in residential use (including 700 acres of public and private roads), approximately 13.9% or 721 acres is in public or semi-public use such as schools, public parks, and religious institutions, approxi-

mately 1% or 51 acres is in commercial use, and approximately 2% or 102 acres is in industrial use;

51. A true and accurate color photograph which fairly and accurately portrays an aerial view of the City of Ladue in 1986 is attached hereto, and incorporated herein by reference as, Spink Aff. Ex. A;

52. A true and accurate black and white photograph which fairly and accurately portrays an aerial view of the City of Ladue in 1990 is attached hereto, and incorporated herein by reference as, Spink Aff. Ex. B;

53. A true and accurate color-coded map of the City of Ladue showing the areas which are zoned residential, commercial and industrial is attached to, and incorporated in, the deposition of Malcolm C. Drummond and incorporated therein by reference as Drummond Aff. Ex. H;

54. Ladue's land use pattern is completely consistent with the City's history, its Comprehensive Plan, and its desire to maintain an open, rural residential community of uncluttered appearance;

55. Ladue is a community of larger than average residential lots, extensive landscaping with plant materials and large public, semi-public, and private open spaces;

56. Ladue's zoning requires much greater than average set-back distances from lot boundaries;

57. Ladue to my knowledge is one of the very few communities in the St. Louis area with zoning districts for 3 acre and 1.8 acre residential lots;

58. Ladue is unique in the high percentage of its area which is zoned for the much larger than average 3 acre or 1.8 acre lot sizes; 17.6% of Ladue's land is zoned for 3 acre residential usage and 41.1% is zoned for 1.8 acre residential usage; more than 75% of Ladue's total land area is zoned for single family residential usage with

minimum lot sizes of three quarters ( $\frac{3}{4}$ ) acre (30,000 square feet) or greater;

59. To my personal knowledge, many homes in Ladue are on lots which exceed the minimum requirements of their zoning districts;

60. Although approximately 84% of Ladue's land is zoned for residential use, the City's planning and land use consultants, HBA, have calculated that residential structures actually cover less than 5% of the land in Ladue, and this low building density contributes to the spacious, open, country-like and uncluttered appearance which Ladue prizes;

61. The large lot sizes and low building density have allowed for the maintenance of large areas of lawns, planted materials, woods, streams, horseback riding trails, and open areas which, to my personal observation, make Ladue unique in the St. Louis metropolitan area;

62. One distinctive feature about Ladue is the fact that it is virtually the only St. Louis suburb which has left its natural drainage ways in their natural state; most of Black Creek (at least two miles) and nearly all of Deer Creek and its tributaries (at least ten miles) have been left in their natural condition; almost without exception, the City of St. Louis and other St. Louis suburbs have boxed and channelized their streams, often underground, to accommodate development; Ladue's natural streams and woods greatly enhance the City's aesthetic impression of being a country-like, natural, open and uncluttered residential community;

63. Except for a small percentage of Ladue's homes which are located on Litzsinger Road, Warson Road, McKnight Road, Lay Road, Clayton Road, Ladue Road, Price Road, Old Warson Road, Des Peres Road and Lindbergh, the homes in Ladue are contained within private subdivisions, with deed covenants and/or restric-

tions administered by subdivisions trustees restricting the use of private property within the subdivisions;

64. Ladue is very unusual in that, to my knowledge, in fewer than a half dozen of the city's approximately 102 residential subdivisions were a majority of the homes built by a single developer/builder; for this reason Ladue's residential areas have a much greater than average charm and aesthetic appeal and they have largely avoided the subdivision tract appearance of many modern suburbs;

65. 207 of Ladue's 210 subdivision streets and lanes are privately owned and maintained by subdivision trustees; by tradition and trustee decisions, these streets—although they are country-like, charming and private—are extremely narrow (generally 16, 18 or 20 feet) typically lack curbs or gutters, lack on-street parking space, lack adjacent sidewalks, and are partially obstructed by moveable obstacles known as "horses" to slow traffic; they are typically undulating and winding;

66. A true and accurate copy of a videotape which fairly and accurately portrays typical Ladue Subdivision Lanes is attached hereto and incorporated herein by reference as Spink Aff. Ex. C;

67. A very good example of Ladue's adherence to its original Comprehensive Plan is the fact that the City's zoning map and its zoning districts are essentially the same today as they were when the city was created (with the addition of such property as has been annexed)—such changes as have been made have been minor and essentially insignificant;

68. Ladue's zoning and land use regulations and its unswerving fidelity to Harland Bartholomew's original plan to my personal observation have been highly successful in achieving the quality of environment, aesthetic excellence, and property values which are the aim of the Comprehensive Plan and have always been the aims of City government since I have been an elected official;

69. In 1974, the City engaged HBA to prepare a study and report on the effectiveness of the original Comprehensive Plan and original comprehensive zoning ordinance after their first 35 years of existence; the basic conclusion of the 1974 study, with which the City Council agreed, was that the City's Comprehensive Plan was working very well and needed no amendment. A true and accurate copy of the 1974 study, "A Preliminary Report Upon the Comprehensive Plan, City of Ladue, Missouri, April, 1974," as it appears in the Archives and regular business records of the City, is attached to, and incorporated the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. I;

70. Ladue has made a major effort since I have been an elected official to improve the aesthetics, beauty and physical harmony of the City's principal commercial area on both sides of Clayton Road from Conway Road westwardly to the Highway 40 overpass (now known as "The Special Business District"), as well as the small commercial areas at the intersection of Lindbergh and Clayton Road, the intersection of Clayton Road and Price Road, on Ladue Road the small industrial area near Hunter Avenue and Highway 170, the Highway 40 access to Clayton Road, and the area of the Ladue Road access to Highway 170;

71. In 1983, after many years of planning, the City created the Special Business District consisting of the City's principal commercial area on Clayton Road between Conway and Highway 40; by means of City appropriations and special assessments the City was able to accomplish the following:

- a) Repavement of the road;
- b) Improvement of sewer and water drainage;
- c) Installation of new and aesthetically attractive traffic signals;

- d) Removal of all overhead telephone poles and wires and electric poles and wires from the street scape;
- e) Planting of trees and shrubs and the placement of flower tubs on both sides of the street;
- f) Construction of sidewalk on the north side of Clayton Road.

72. The aesthetics and appearance of the Special Business District were carefully planned and executed by the City in consultation with property owners and with HBA which prepared a detailed study and recommendation dated June 24, 1982, a true and accurate copy of which is attached to and incorporated in, The Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. J;

73. A true and accurate copy of the color rendering of the 1982-1983 Special Business District Improvements prepared by HBA is attached to, and incorporated in the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. K;

74. A true and accurate copy of the blueprint for the 1982-1983 Special Business District Improvement prepared by HBA is attached to, and incorporated by reference in, The Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. L;

75. The total public and private cost of the Special Business District Improvement Project has been approximately three quarters of a million dollars (750,000);

76. The aesthetic upgrading and improvement of the Special Business district were quite dramatic;

77. True and accurate photographs which fairly and accurately portray the appearance of the Special Business District *before* the improvements made in 1982-1983 are attached to and incorporated in the Affidavit of Malcolm C. Drummond as Drummon Aff. Exhibits M through P;



78. True and accurate photographs which fairly and accurately portray the appearance of the Special Business District *after* the improvements made in 1982-1983 are attached to and incorporated by reference in the Affidavit of Malcolm C. Drummond as Drummond Aff. Exhibits Q through T;

79. As a result of the aesthetic improvements made by Ladue in connection with the Special Business District improvements, Ladue received the Governor's Town Tree-scape Award in 1984 from Governor Christopher Bond. A true and accurate copy of the Award received by the City is attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Ex. U;

80. The intense public interest in Ladue in maintaining exceptionally high aesthetic and environmental standards is demonstrated by long-standing and continuous efforts by both the City and private organizations to upgrade, improve and beautify all areas visible to the public;

81. In order to foster and encourage the beautification and aesthetic improvement of all public and semi-public areas of Ladue, the City has a Civic Improvement Committee which was created in the late 1940's and which has been in continuous existence ever since; this group, of which I am a very active member, and which I served as Chairman for 5 years, facilitates and oversees the careful planning, planting, care and maintenance of trees, shrubs and flowers in public and semi-public areas;

82. This is reflected in the true and accurate copies of the minutes and activity summaries of the Civic Improvements Committee from 1970 through 1990 which are attached hereto and incorporated herein by reference as Spink Aff. Ex. D;

83. Attached hereto and incorporated herein by reference are true and accurate copies of photographs of recent date which fairly and accurately portray various repre-

sentative beautification projects accomplished by the Civic Improvement Committee (in which I have been personally involved) as identified below:

Spink Aff. Exh.	Location	Approximate Project Date	Project
E	McKnight at Litzsinger	1984-90	Creating annual flower plot and planting of trees
F	McKnight at Litzsinger	1990	Adding shrubbery to annual flower plot
G	Clayton Rd. at Lindbergh	1988-90	Planting and care of trees, annuals, ground cover and bulbs
H	Clayton Rd. at Lindbergh	1988-90	Planting and care of trees, annuals, ground cover and bulbs
I	Clayton Rd. at Lindbergh	1988-90	Planting and care of trees, annuals, ground cover and bulbs
J	Exit Ramp Hwy. 40 to Warson Road	1988-89	Landscaping, planting and maintenance of trees, shrubs, ground cover and flowers
K	Hwy. 270 at Ladue Rd.	1989	Landscaping and planting trees and shrubs on access ramp islands
L	Hwy. 270 at Ladue Rd.	1989	Landscaping and planting trees and shrubs on access ramp islands

Spink Aff. Exh.	Location	Approximate Project Date	Project
M	Exit ramp from Hwy. 40 to Clayton Rd.	1988-89	Landscaping, shrubbery, flower tubs
N	Clayton Rd. Business Area	1983- Present	Landscaping, planting
O	Clayton Rd. Business Area	1983- Present	Landscaping, planting
P	Clayton Rd. at Price	1983	Planting flowers and ground cover
Q	Clayton Rd. Business Area	1983	Planting trees
R	Warson/Clayton Underpass	Mid-70's to Date	Landscaping and planting trees and shrubs
S	McDonald Service Station, Clayton Rd. at Price	Mid-80's to Date	Planting trees, shrubs and flowers

84. Ladue has consistently adhered to the advice provided to it by its planning consultants, HBA, that the location, existence and design of signage in a community directly affect the community's visual and aesthetic appeal, and that the careful regulation of signage is an essential element of city planning;

85. Ladue has also consistently heeded the advice of HBA that most types of temporary signs and some types of permanent signs, whether on private property or on public easements or in the public right-of-way, create a special risk of visual blight through proliferation because there are no natural limitations on their number or duration;

86. I am personally aware and have personally observed that many interest groups, political organizations, other associations, groups, and individuals distribute signs and placards in volume from time to time for display in

the St. Louis metropolitan area, both in private yards and in public areas and the public rights-of-way;

87. I am also personally aware that many St. Louis suburban communities which do not restrict such signs experience unsightly proliferation of temporary or permanent signs constructed by residents or merchants themselves for many purposes;

88. Based upon my personal knowledge and experience, many municipalities in St. Louis County which do not strictly limit the erection of signs frequently experience a proliferation of yard signs and placards and temporary and permanent signs in the campaigns before municipal, primary, or general elections but such proliferation can and often does occur at other times as well;

89. Ladue has strictly limited signage in its city limits in the interests of aesthetics, privacy, maintenance of property values, and safety since it was incorporated;

90. From the earliest days of the three predecessor villages to Ladue until the late 1950's Ladue had strict signage restrictions and prohibitions incorporated in the applicable zoning ordinances themselves; true and accurate copies of those zoning ordinances as they appear in the City's Archives and regular business records are attached to and incorporated in the Affidavit of Malcolm C. Drummond as Drummond Aff. Exhibits V through Z;

91. Beginning in 1959, the sign restrictions of Ladue were separated from its zoning code and set apart in a separate ordinance and City Code Section; true and accurate copies of all of Ladue's sign ordinances and their amendments from 1959 through the present time as they appear in the Archives and the regular business records in the City of Ladue are attached to, and incorporated in, the Affidavit of Malcolm C. Drummond as Drummond Aff. Exhibits AA through JJ;

92. Before the filing of this litigation, Ladue had never to my knowledge experienced a proliferation of signs either in residential neighborhoods or in public streets and rights-of-way;

93. Since the filing of this litigation, and since the agreement of the City temporarily to forego the enforcement of its new sign ordinance against non-commercial speech, I have personally become aware of examples of unsightly sign proliferation;

94. For example, in February 1991, I observed numerous temporary signs stating "Jay Levitch—50—Happy Birthday" on private property and on the public right-of-way; true and accurate copies of photographs which fairly and accurately portray this unsightly proliferation of signs at at least 9 locations are attached hereto and incorporated herein by reference as follows:

Location	Spink Aff. Exhibit
Clayton at Price, Southwest corner	T
Clayton at Hwy 40, Southeast corner	U
Clayton at Warson, Northeast corner	V
Litzsinger at Warson, Northwest corner	W
Old Warson at Woodlawn, Northwest corner	X
Clayton at Warson, Northwest corner	Y
14 Midpark Lane	Z
Warson at Woodlawn, Southwest corner	AA
Warson at Woodlawn, Northwest corner	BB

95. On January 21, 1991, at the regular public meeting of the City Council, the City duly adopted an ordinance which repealed its former Chapter 35 of the Ladue City Code and adopted a new Chapter 35 in its place; Councilmen Hensley, Johnston, Wood and Fonyo voted to pass the ordinance, Councilman Remington abstained, Councilman Mudd was absent, and I did not have a vote;

this ordinance was duly signed by me as Mayor on January 22, 1991, and the ordinance became effective as of the date. A true and accurate copy of said new ordinance as it appears in the Archives and regular business records of the City of Ladue is attached to this stipulation and incorporated herein by reference as Spink Aff. Exhibit CC;

96. At the regular public meeting of the City Council on January 21, 1991, the council also adopted an ordinance which repealed a section of the City Code which had permitted the erection of garage sale signs in residential neighborhoods; this ordinance was duly signed by me as Mayor on January 22, 1991, and the ordinance became effective on that date. A true and accurate copy of said ordinance as it appears in the Archives and regular business records of the City of Ladue is attached hereto and incorporated herein by reference as Spink Aff. Exhibit DD;

97. A true and accurate copy of the official minutes of the Council Meeting of January 21, 1991 as approved by the Council and as they appear in the Archives and regular business records of the City of Ladue are attached hereto and incorporated herein by reference as Spink Aff. Exhibit EE;

98. At the regular public meeting of the City Council on February 25, 1991, the Council adopted an additional ordinance, which made certain technical corrections and minor modifications to the new sign ordinance; Councilmen Hensley, Johnston, Wood, Fonyo voted to pass the ordinance and Councilman Mudd abstained, Councilman Remington was absent, and I did not have a vote; I duly affixed my signature to the ordinance on the same day, at which time it became effective; a true and accurate copy of the entire new City sign code, as amended on February 25, and as it presently exists, is attached hereto and incorporated herein by reference as Spink Aff. Exhibit FF;

99. Plaintiff Margaret Gilleo, resides in the private Willow Hill subdivision of the city of Ladue;



100. The Willow Hill subdivision in which plaintiff resides is a private residential subdivision governed by a trust indenture, a true and accurate copy of which is attached hereto and incorporated herein by reference as Spink Aff. Exhibit GG;

101. Willow Hill Lane, the street on which Plaintiff resides, is a private street owned and maintained by the trustees of Willow Hill subdivision;

102. The Willow Hill subdivision consists of 57 private single-family homes, the only access to which is by means of Willow Hill Lane which connects to Ladue Road;

103. Willow Hill Lane is not a thoroughfare;

104. As a long-time resident of Ladue, and as Mayor, I am personally aware that plaintiff has at least the following forms of expression actually available to her for the expression of the message she desires to convey on her sign, each of which would be fully consistent with Ladue's zoning, land use, and sign ordinances and not inconsistent with Ladue's strong interests in aesthetics, privacy, maintenance of property values, and safety;

- A. Letters, handbills, or flyers mailed to the residents of Willow Hill subdivision or to a broader audience;
- B. Letters, handbills, or flyers personally delivered to the residences in the Willow Hill subdivision or to a broader audience;
- C. Person-to-person and/or door-to-door solicitation of neighbors in Willow Hill subdivision or a broader audience) to support plaintiff's position;
- D. Telephone calls to her Willow Hill neighbors or to a broader audience to solicit support for plaintiff's views;
- E. Paid advertisements in newspapers or local circulation in Willow Hill subdivision in Ladue and/

or over a broader area including but not limited to the St. Louis Post Dispatch, the St. Louis Suburban Journal and the Ladue News;

- F. Use of a bumper sticker bearing a similar legend on plaintiff's automobile;
- G. Speaking at neighborhood meetings;
- H. Inviting neighbors to tea or coffee or cocktails in plaintiff's own home to discuss the issue of concern to her and to seek to persuade others to adopt her view;
- I. Writing letters to the editor for newspapers and other periodicals in circulation in the City of Ladue and metropolitan St. Louis including, but not limited to, the St. Louis Post Dispatch and the St. Louis Suburban Journal;
- J. Calling to radio talk shows in suburban St. Louis sponsored by several local radio stations;
- K. Making use of "public forum" commentary opportunities provided by most or all of the television stations in the metropolitan St. Louis area including the local affiliates of each of the three national commercial networks, the local affiliate of the Public Broadcasting System, two local independent stations, and the local access channel provided by our cable television franchisee;
- L. Arrangement for use of numerous public premises of the county, or school districts or library district, or of numerous private premises of schools and churches, located in Ladue, for a public meeting.

/s/ Edith J. Spink  
EDITH J. SPINK

[Notarization Omitted in Printing]



CITY OF LADUE  
1986



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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**SECOND AMENDED COMPLAINT**

Comes now Margaret P. Gillico and, for her Second Amended Complaint, states as follows:

*Parties*

1. Plaintiff is a citizen and resident of the State of Missouri, residing in St. Louis County, Missouri, within the City of Ladue.

2. Defendant City of Ladue is a Class 4 City located within St. Louis County and the State of Missouri. Defendant Spink is the Mayor of Ladue and an *ex officio* member of the City Council. Defendant Remington, Hensley, Johnston, Wood, Mudd and Fonyo are members of the Ladue City Council, of which Remington is president.

*Jurisdiction*

3. Plaintiff alleges claims under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the Constitution of the United States.

4. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because Plaintiff alleges claims arising under the First and Fourteenth Amendments to the United States Constitution.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the claims arose in this judicial district.



*Statement Of Claim*

5. On or about December 8, 1990, Plaintiff placed upon her own property located within the City of Ladue a sign stating "SAY NO TO WAR IN THE PERSIAN GULF CALL CONGRESS NOW" for the purpose of expressing her belief in opposition to war in the Persian Gulf.

6. The sign was taken from Plaintiff's property on December 8, the same day she put it up.

7. On or about December 10, 1990, Plaintiff replaced the sign with an identical sign. The next day, the sign was knocked down, apparently by vandals.

8. Plaintiff called the Police Department for the City of Ladue to request assistance in protecting her sign from vandals. Plaintiff was informed at that time that posting such signs was against a Ladue ordinance.

9. Plaintiff then telephoned Ladue City Hall in order to obtain further information regarding the ordinance. She was advised that such signs were not permitted in Ladue.

10. On or about December 12, 1990, Plaintiff went to Ladue City Hall to obtain a copy of the ordinance. She was given a copy of the ordinance ("old Chapter 35") (attached hereto as "Exhibit A"). Plaintiff read the ordinance and believed she could obtain a permit to display her sign from E. C. Hankins, the Ladue City Clerk. However, Plaintiff was further advised that Mr. Hankins was unavailable but would be available on December 13.

11. On December 13, Plaintiff returned to Ladue City Hall and was again advised that Defendant Hankins was not in. She was then referred to Chief Calvin Dierberg, the Ladue Chief of Police. Chief Dierberg asked Plaintiff what her sign said, and Plaintiff told him. Chief Dierberg then advised Plaintiff that he could not issue

her a permit to display the sign, but she could attend the next City Council meeting to petition the Council for permission to display the sign.

12. On December 17, 1990, Plaintiff appeared before the City Council of the City of Ladue, at a regularly scheduled council meeting, and requested the issuance of a permit to place the aforementioned sign on her property.

13. A vote was held by the City Council denying Plaintiff a permit to place such sign upon her property.

14. On December 20, 1990, Plaintiff initiated this lawsuit, seeking to have Old Chapter 35 declared unconstitutional and its enforcement enjoined, on grounds that it unlawfully infringed Plaintiff's constitutional rights to free speech. An evidentiary hearing was held on December 26, 1990, at which time Plaintiff and Defendants presented evidence with regard to the issue of the ordinance's constitutionality.

15. On January 7, 1991, following the filing of motions and briefs, this Court issued a preliminary injunction and memorandum decision finding the ordinance unconstitutional on its face and prohibiting Defendants from enforcing the ordinance.

16. On January 21, 1991, the City of Ladue repealed old Chapter 35 and enacted a new chapter dealing with signage in Ladue ("new Chapter 35").

17. On February 25, 1991, the City Council of Ladue amended new Chapter 35, making several changes to the existing chapter.

18. Defendants' new Chapter 35, likewise, violates the rights of free speech protected by the First Amendment of the Constitution of the United States for the same reasons alleged in Plaintiff's original Complaint and as found by the Court in its January 7, 1991, Memorandum And Order, and it should be invalidated.

19. Defendants have agreed by stipulation that they will not enforce, or cause to be enforced, any of the provisions of new Chapter 35 until such time as this Court rules on the merits of this case and the permanent injunction sought by Plaintiff.

20. Plaintiff presently has a sign displayed on her property expressing her views relating to events in the Persian Gulf and wishes to maintain that sign on her property. Defendants have made it clear that, absent judicial intervention, they will prevent Plaintiff from displaying the sign in question.

21. Any actions of the City which would seek to restrain Plaintiff's freedom of speech and/or the denial of a permit to place signs upon her property will cause Plaintiff irreparable harm and will result in damages to Plaintiff that are difficult, if not impossible, to ascertain.

22. Unless Defendants are enjoined from removing the aforementioned signs from Plaintiff's property, or alternatively enjoined from seeking to enforce the unconstitutional new Chapter 35, constitutional rights of Plaintiff will be impermissibly abridged.

WHEREFORE, Plaintiff demands that the Court enter the following orders and relief:

1. A permanent injunction restraining and prohibiting Defendants from, directly or indirectly, alone or in concert with others, enforcing the provisions of the Ladue City Ordinance, New Chapter 35, or thereafter enacting another ordinance which violates the First Amendment rights of Plaintiff and others similarly situated.

2. A permanent injunction restraining and prohibiting Defendants, or their representatives, from removing the aforementioned signs from the property of Plaintiff or others similarly situated.

3. An award of summary judgment on Plaintiff's claims pursuant to the Motion For Summary Judgment filed on February 11, 1991.

4. An order awarding Plaintiff's counsel reasonable attorneys' fees and costs of court.

5. Whatever additional relief the Court may deem appropriate under the circumstances.

GREEN, HOFFMAN & DANKENBRING  
For the American Civil Liberties  
Union of Eastern Missouri

By: /s/ Mitchell A. Margo  
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GERALD P. GREIMAN  
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314-862-6800  
Attorneys for Plaintiff

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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AFFIDAVIT OF NANCY R. SACHS

Nancy R. Sachs, being first duly sworn, states as follows:

1. I am a resident of the City of Ladue, residing at 32 Dromara Road. I have been a resident of Ladue since 1956.

2. Although I have lived in Ladue for approximately 35 years, I was not aware until December 19, 1990, that Ladue had an ordinance preventing me from placing a sign on my property if I so desired. I have never placed a non-commercial, political yard sign on my property.

3. I am aware that the City of Ladue enacted a new sign ordinance on January 21, 1991, which, if enforced, would prevent me from placing a small political, non-commercial yard sign on my property.

4. I am also aware that the ordinance states that its purpose is to prevent a proliferation of yard signs in Ladue.

5. I do not believe that this restrictive and prohibitive ordinance is necessary to prevent a proliferation of yard signs in Ladue.

6. When the City of Ladue made the public announcement that it would not enforce the terms of its ordinance until the federal court ruled on the constitutionality of the ordinance, I decided this would be the perfect time to see for myself whether the lack of enforceable ordi-

nance—in effect no ordinance—would lead to a proliferation of political, non-commercial signs in Ladue.

7. On five separate occasions between January 30, 1991, and February 16, 1991, I toured various subdivisions within the City of Ladue, checking specifically for political, non-commercial yard signs in the various residential subdivisions.

8. I reasoned that, during this tense period of war in the Middle East and highly-charged debate among the citizens of Ladue over this sign ordinance, the residents of the City of Ladue were more likely to put up yard signs than ever before.

9. On January 30, 1991, I toured McKnight Road, Ladue Road within the City of Ladue, La Hacienda, Dromara Road and Price Road. I did not see a single political, non-commercial sign along any of those roads. I did see several American flags and yellow ribbons tied around trees, mailboxes and front doors, but I do not know whether these are considered signs under the Ladue ordinance. It should be noted that I have always seen American flags on private property throughout the City of Ladue.

10. On February 6, 1991, I toured Willow Hill and McKnight Road. I saw no political, non-commercial signs on any residential property in those two sections of Ladue.

11. On February 8, 1991, I toured Lorenzo Lane, Whitegate Lane, Brookside, Glen Eagles and Price Road. I did not see a single political, non-commercial yard sign along any of those roads or in any of those subdivisions. Again, as in the past, I did see some American flags and yellow ribbons.

12. On February 12, 1991, I toured Colonial Hills, McKnight Road, Dromara Road, Nassau, Fleetwood, Willow Hill, La Hacienda and Price Road. I did not see



a single political, non-commercial yard sign along any of those roads or in any of those subdivisions.

13. On February 16, 1991, I toured Ladue Manor, Braeburn, Cella Road, Pine Valley, Barnes Road, Upper Barnes Road, Conway Road (from Clayton Road to Warson Road), Conway Close, Warson Road (from Clayton Road to Ladue Road), Picardy Lane, Old Chatham, Upper Ladue Road, Fordyce Lane, Ladue Road (from McKnight Road to Lindbergh Boulevard) and Clayton Road (from McKnight Road to Lindbergh Boulevard). I did not see any political or non-commercial yard signs along any of these roads or in any of these subdivisions other than American flags and some yellow ribbons.

14. From my informal survey, I can only conclude that there will be no proliferation of non-commercial, political yard signs in the City of Ladue even if the city had no sign ordinance and the residents were left to themselves to decide whether or not to put up yard signs on their property.

15. I believe that the City Council of Ladue has decided it does not like the content of political, non-commercial messages expressed in many yard signs; that this content-based dislike of yard signs at least partly has motivated Ladue's ban of such signs; and that Ladue's assertions that allowing political, non-commercial signs in the City of Ladue would create a proliferation of those signs are false, speculative and largely based on content.

16. As further evidence of my belief that there would be no proliferation of signs, even absent a sign ordinance in its entirety, I attach to this affidavit a letter I received from Mayor Edith Spink dated January 11, 1991, in which the residents of Ladue were asked, in essence, whether they favored the city continuing a legal battle to eliminate political, non-commercial yard signs in Ladue.

17. Mayor Spink announced that sixty percent (60%) of those who responded to the letter were in favor of the city banning all political yard signs, and forty percent (40%) were opposed. If sixty percent of the residents of Ladue favor banning yard signs, then that sixty percent certainly would not put up a yard sign. Certainly there can be no proliferation of signs in Ladue given that only forty percent of the people would even consider placing a yard sign on their property. It is also my belief that of the forty percent who would consider putting up yard signs, many of those are of similar inclination to me; that is, I probably would not place a yard sign on my property, but, as an American citizen, I very dearly value the right to do so if I choose, and no government should be able to prevent me from exercising that right.

Further affiant sayeth not.

/s/ Nancy R. Sachs  
NANCY R. SACHS



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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SUPPLEMENTAL AFFIDAVIT OF  
EDITH J. SPINK

Comes now Edith J. Spink, being first duly sworn upon her oath who deposes and says as follows:

1. I am the same Edith J. Spink who executed an affidavit dated March 1, 1991 in support of defendants' motion for summary judgment filed herein, and I make this supplement to my affidavit.

2. The first Tuesday in April every year is a general municipal day election day throughout Missouri. Section 115.123, (RSMo. 1986). Other regular election days in Missouri occur in February, March, June, August and November. *Id.*

3. On Wednesday, March 20, 1991, I personally toured areas of the Cities of Brentwood and Clayton, both immediately adjacent to the City of Ladue, and I observed a general proliferation of yard signs relating to the 1991 April general municipal elections, both on private property and in public areas and street rights-of-way.

4. Attached hereto and incorporated herein by reference as Spink Affidavit Exhibit HH is a true and accurate copy of a videotape, made in my presence and under my direct supervision on March 20, 1991, reflecting the proliferation of yard signs then existing, which truly and accurately portrays the appearance of the streets and areas shown in the videotapes as of that time, including:

*Brentwood*

Pine Avenue  
 Kempton Lane  
 Sonora

*Clayton*

Wydown Boulevard  
 Ridgemoor Drive  
 Claverach Park  
 Broadview Drive  
 Edgewood Drive  
 Carswold Drive  
 Walinca Terrace  
 Oakley Drive  
 Shirley Drive

FURTHER, AFFIANT SAYETH NOT.

/s/ Edith J. Spink  
 EDITH J. SPINK

[Notarization Omitted in Printing]

## SUPREME COURT OF THE UNITED STATES

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No. 92-1856

CITY OF LADUE, *et al.*,  
*Petitioners*

v.

MARGARET P. GILLES

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## ORDER ALLOWING CERTIORARI

Filed October 4, 1993

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. Rule 29 does not apply.

October 4, 1993